

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

NAOMA R. PINKSTON, Appellant

and

U.S. POSTAL SERVICE, DESHA POST
OFFICE, Desha, AR, Employer

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**Docket No. 05-1097
Issued: October 12, 2005**

Appearances:
Naoma R. Pinkston, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
DAVID S. GERSON, Judge

JURISDICTION

On April 19, 2005 appellant filed a timely appeal from the January 25, 2005 decision of the Office of Workers' Compensation Programs terminating wage-loss 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.

ISSUES

The issues are: (1) whether the Office met its burden of proof to terminate appellant's medical and wage-loss benefits effective May 25, 2001 on the grounds that she had no further residuals due to her accepted employment injury; and (2) whether appellant has established that she had continuing disability after May 25, 2001 causally related to her accepted employment injury.

FACTUAL HISTORY

On August 16, 1990 appellant, then a 42-year-old postmaster, filed a traumatic injury claim for a back injury, which was accepted for lumbar strain.¹

Appellant was treated by Dr. James R. Harbin, a treating physician,² who on February 24, 1999 found that appellant continued to experience disability due to her work-related injury and suffered from depression as a result of her physical restrictions. In a December 15, 1999 report, Dr. Harbin opined that appellant was unable to work due to her accepted injury.

The Office referred appellant, along with the medical record and statement of accepted facts to Dr. Harold Chakales, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated July 20, 1999, he found no significant abnormality of the lumbar spine, except for chronic pain and decreased range of motion related to degenerative disc disease, and no evidence that appellant was totally disabled. Dr. Chakales indicated that functional capacity and psychological evaluations might be in order. In a subsequent report dated October 4, 1999, he opined that appellant's employment-related injury had "most likely" healed, but that she suffered from chronic low back and neck pain resulting from degenerative disc disease of the cervical and lumbar spine. He further stated that there was a psychological element to her disease process and that, though the work-related injury had healed, she still suffered residuals of chronic back, neck and leg pain.

The Office determined that another second opinion examination was necessary. On October 6, 1999 appellant was examined by Dr. Joe Crow, who found no objective evidence that the condition of lumbar strain was active or caused any disability to appellant. He also opined that appellant suffered from degenerative disc disease in the cervical spine that was nonwork related, but was probably associated with normal aging.

The Office found a conflict between the opinions of Dr. Crow and Dr. Harbin and referred appellant, together with a statement of accepted facts, questions to be addressed and the entire case record, to Dr. David T. Sward, a Board-certified orthopedic surgeon, for an impartial medical examination. In a report dated April 20, 2000, Dr. Sward reviewed appellant's factual and medical history, listed her present complaints and discussed diagnosed conditions and the findings of diagnostic testing. Dr. Sward found that appellant's subjective complaints were not consistent with any objective findings and that symptom magnification was evident. He provided a diagnosis of low back pain with mild degenerative joint disease of the facets in the lumbar spine and possible undifferentiated somatoform disorder. Dr. Sward opined that there was no causal relationship between appellant's complaints and the accepted injury "with one exception of a possible somatoform disorder." He recommended that appellant undergo psychological/psychiatric evaluation, followed by a work capacity evaluation, the results of which might affect his opinion regarding appellant's disability.

¹ Appellant returned to limited duty on March 8, 1991 and continued working until she reinjured her back on January 8, 2004. Her claim was again accepted for lumbar strain.

² Dr. Harbin's letterhead "stamp" indicates that he is a doctor of osteopathy. However, his credentials cannot be verified.

Finding Dr. Sward's report incomplete and inconclusive, the Office referred appellant to Dr. Alice Martinson, a Board-certified orthopedic surgeon, and Dr. Bradley Diner, a Board-certified psychiatrist, for additional impartial medical examinations.

In a report dated October 16, 2000, Dr. Martinson provided a history of appellant's condition, indicating that he had reviewed the case file. Although he determined that there were mild degenerative changes in her cervical spine, he opined that they were not job related and were not incapacitating. Dr. Martinson provided a detailed report of his examination, finding that she walked without a limp and was able to sit without apparent discomfort for 15 to 20 minutes; that she voluntarily limited forward flexion of the lumbar spine, as well as lateral bend, rotation and extension; that there was no palpable spasm; that she could heel and toe walk normally; that seated root test was negative bilaterally; straight leg raising was negative at 80 degrees bilaterally; the Faber test was negative bilaterally; sensory, motor and deep tendon reflex examinations were normal in both lower extremities; that she had no measurable thigh or calf atrophy; and that her peripheral pulses were palpable. Dr. Martinson indicated that x-rays and MRI scans showed no abnormalities, other than some minor degenerative disc changes in the cervical spine that were within the range of "normal" for her age and were not attributable to her employment. Dr. Martinson reported that there was no evidence of ongoing musculoskeletal pathology related to appellant's employment and no objective evidence of a work-related condition.

Following a clinical interview, psychological testing of appellant and a complete review of the entire case record, Dr. Diner provided diagnoses of depressive disorder, pain disorder associated with both psychological factors and a chronic general medical condition and opiate dependence. In a report dated July 10, 2000, he opined that appellant's psychological condition was not related to her employment injury. Dr. Diner provided a thorough and detailed history of appellant's physical and psychological condition and treatment. Test results revealed that appellant had the ability to "develop physical problems when she [was] under stress." He indicated that appellant's depression was a culmination of unresolved bereavement, longstanding inability to express her feelings, chronic narcotic analgesic management, and chronic pain from a variety of sources. Dr. Diner opined that she had the propensity to develop depression under any triggering negative life event. By letter dated November 22, 2000, the Office asked Dr. Diner to clarify his opinion as to whether appellant's psychological condition was work related. In a report dated December 6, 2000, Dr. Diner reiterated his opinion that appellant's depression and chronic pain disorder were not related to the 1994 employment injury.

By letter dated November 22, 2000, the Office asked Dr. Martinson to opine as to whether appellant suffered from chronic pain syndrome and, if so, whether the condition was related to the 1994 work injury. In a report dated February 8, 2001, Dr. Martinson opined that appellant suffered from chronic pain syndrome that "clearly developed after her 1994 employment injury. Based on his review of the entire record, including Dr. Diner's reports, he also opined that appellant's psychological and personality abnormalities, which perpetuated her chronic pain syndrome, preexisted the 1994 employment injury.

On April 25, 2001 the Office issued a notice of proposed termination of compensation and medical benefits on the grounds that residuals related to appellant's accepted condition had ceased. No response was received by the Office.

By decision dated May 25, 2001, the Office terminated appellant's compensation and medical benefits, finding that the reports of Dr. Diner and Dr. Martinson represented the weight of the medical evidence.

By letter dated June 6, 2001, appellant, by her representative, requested an oral hearing. By letter dated June 17, 2002, appellant, by her representative, submitted a second request for an oral hearing.

In a report dated July 2, 2002, Dr. Harbin stated that appellant continued to have restrictions in her ability to sit, stand, walk, bend, squat, kneel, twist, climb, perform normal hand functions and/or manipulations due to her original employment injury. He further opined that she was totally disabled.

Appellant submitted a form to the Employees' Compensation Appeals Board dated September 26, 2002, appealing the Office's May 25, 2001 decision. By order dated March 19, 2003, this Board dismissed appellant's appeal as untimely.³ By order dated September 15, 2003, the Board denied appellant's request for reconsideration of its March 19, 2003 decision.

By letters dated April 7 and November 18, 2003, appellant, by her representative, renewed her request for an oral hearing.

Appellant submitted numerous duty status reports signed by Dr. Harbin, reflecting that appellant suffered continuing disability as a result of her employment injury. In an August 23, 2004 report, Dr. Harbin opined that appellant would be "totally impaired for life." He stated that her inability to sit or stand for any prolonged period of time without increasing her pain level, precluded the possibility of her returning to work. He further noted that appellant suffered from depression as a result of her inability to be gainfully employed.

Appellant submitted reports signed by Dr. Bruce L. Safman, a Board-certified physiatrist, dated December 6, 2002, January 10, February 14, March 28, May 9, May 30, June 27, August 22 and November 21, 2003, and January 23, February 13, March 16, May 14 and July 30, 2004. Dr. Safman's December 6, 2002 report reflected a diagnosis of lumbosacral and sacroiliac strain and piriformis syndrome. Dr. Safman stated that appellant had been referred to him for evaluation and treatment of lower lumbar pain, which she had reportedly been experiencing since her 1990 injury. His examination revealed tenderness in appellant's lower lumbar spine, over the left sacroiliac and left piriformis; minimal tenderness over adductor tendon of the left hip; and no guarding or muscle spasm. He found that range of motion of the lumbar spine produced minimal discomfort; straight leg raising was negative; and strength, sensation and reflexes were intact in the lower extremities. January 10, 2003 notes reflect that appellant's "MRI [scan] was normal." The remaining documents are status reports reflecting

³ *Naoma Pinkston*, Docket No. 03-69 (issued March 19, 2003).

appellant's ongoing complaints of cervical and lumbar pain, as well as "diffuse aches and pains" involving her upper and lower extremity and chest wall. None of the reports provided an opinion as to a causal relationship between appellant's diagnosed condition and the accepted employment injury.

At the September 1, 2004 hearing, appellant testified that she had had continuous pain since the accepted 1994 employment injury. She stated that she had not worked since January 1994 and that she had been found eligible for social security disability benefits.

By decision dated January 25, 2005, an Office hearing representative affirmed the May 25, 2001 decision terminating appellant's medical and wage-loss benefits.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying a termination or modification of compensation benefits.⁴ After it has determined that an employee has a condition causally related to his or her federal employment, the Office may not terminate compensation without establishing that the condition has ceased or that it is no longer related to the employment.⁵ The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which requires further medical treatment.⁶

If there is disagreement between the physician making the examination for the Office and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁷ 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.⁸

ANALYSIS -- ISSUE 1

Having accepted appellant's claim for lumbar strain, the Office terminated her compensation and medical benefits on May 25, 2001 on the grounds that the condition had

⁴ *Willa M. Frazier*, 55 ECAB ____ (Docket No. 04-120, issued March 11, 2004); *see also Harold S. McGough*, 36 ECAB 332 (1984).

⁵ *Willa M. Frazier*, *supra* note 4; *see also Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁶ *LaDonna M. Andrews*, 55 ECAB ____ (Docket No. 03-1573, issued January 30, 2004); *see also Wiley Richey*, 49 ECAB 166 (1997); *Furman G. Peake*, 41 ECAB 361 (1990).

⁷ 5 U.S.C. § 8123(a).

⁸ *See Roger Dingess*, 47 ECAB 123, 126 (1995); *Glenn C. Chasteen*, 42 ECAB 493, 498 (1991).

resolved and related residuals had ceased. The Office, therefore, bears the burden of proof to justify a termination of benefits. The Board finds that the Office has met its burden of proof.

Appellant was treated by Dr. Harbin, who opined that, as of December 15, 1999, appellant was unable to work due to her accepted injury. In a somewhat ambiguous second opinion report, Dr. Chakales found no significant abnormality of the lumbar spine, except for chronic pain and decreased range of motion related to degenerative disc disease. Dr. Chakales opined that appellant's employment-related injury had "most likely" healed, but that she suffered from chronic low back and neck pain resulting from degenerative disc disease of the cervical and lumbar spine and that there was a psychological element to her disease process. In a subsequent second opinion report, Dr. Crow found no objective evidence that the condition of lumbar strain was active or caused any disability to appellant. He also opined that appellant suffered from degenerative disc disease in the cervical spine that was nonwork related, but was probably associated with normal aging.

The Office found a conflict between the opinions of Dr. Crow and Harbin. In order to resolve the conflict, the Office properly referred appellant to Dr. Sward, an impartial medical specialist, who found that appellant's subjective complaints were not consistent with any objective findings and that symptom magnification was evident. He provided a diagnosis of low back pain with mild degenerative joint disease of the facets in the lumbar spine and possible undifferentiated somatoform disorder. Dr. Sward opined that there was no causal relationship between appellant's complaints and the accepted injury "with one exception of a possible somatoform disorder." He recommended that appellant undergo psychological/psychiatric evaluation, followed by a work capacity evaluation, the results of which might affect his opinion regarding appellant's disability. Finding Dr. Sward's report incomplete and inconclusive, the Office referred appellant to Dr. Alice Martinson, a Board-certified orthopedic surgeon, and Dr. Bradley Diner, a Board-certified psychiatrist, for additional impartial medical examinations.

Dr. Martinson's opinion, which is based on a proper factual and medical history, is well-rationalized and supports the determination that residuals from appellant's accepted condition had ceased by May 25, 2001, the date the Office terminated her benefits. Dr. Martinson accurately summarized the relevant medical evidence, provided findings on examination and reached conclusions regarding appellant's condition which comported with her findings. His examination revealed that she walked without a limp and was able to sit without apparent discomfort for 15 to 20 minutes; that she voluntarily limited forward flexion of the lumbar spine, as well as lateral bend, rotation and extension; that there was no palpable spasm; that she could heel and toe walk normally; that seated root test was negative bilaterally; straight leg raising was negative at 80 degrees bilaterally; the Faber test was negatively bilaterally; sensory, motor and deep tendon reflex examinations were normal in both lower extremities; that she had no measurable thigh or calf atrophy; and that her peripheral pulses were palpable. Dr. Martinson indicated that x-rays and MRI scans showed no abnormalities, other than some minor degenerative disc changes in the cervical spine that were within the range of "normal" for her age and were not attributable to her two on-the-job injuries. He reported that there was no evidence of ongoing musculoskeletal pathology related to appellant's accepted employment injuries and no objective evidence of a work-related condition. Dr. Martinson opined that appellant suffered from chronic pain syndrome that "clearly developed after her 1994

employment injury and that her psychological and personality abnormalities, which perpetuated her chronic pain syndrome, preexisted the 1994 employment injury.

Dr. Diner's psychiatric report is also based on a proper factual and medical history, is well rationalized and supports the determination that appellant's psychological condition was not related to her employment injury. Following a clinical interview, psychological testing of appellant and a complete review of the entire case record, Dr. Diner provided diagnoses of depressive disorder; pain disorder associated with both psychological factors and a chronic general medical condition, and opiate dependence. Dr. Diner provided a thorough and detailed history of appellant's physical and psychological condition and treatment. Test results revealed that appellant reported a number of vague physical complaints and that she had the ability to "develop physical problems when she [was] under stress." He indicated that appellant's depression was a culmination of unresolved bereavement, longstanding inability to express her feelings, chronic narcotic analgesic management, and chronic pain from a variety of sources. He opined that she had the propensity to develop depression under any triggering negative life event and opined that appellant's depression and chronic pain disorder were not related to her employment injury.

As Drs. Martinson and Diner provided detailed and well-rationalized reports based on a proper factual background, their opinion is entitled to the special weight accorded impartial medical examiners. The remaining evidence of record is insufficient to outweigh that special weight.

The fact that appellant is eligible for social security benefits has no bearing on her entitlement to work-related disability under the Act. Decisions of other agencies regarding disability are not binding on the Office, because the standards for establishing work-related disability under the Act, which governs the Office and the Board, are not the same as the standards set for disability retirement or social security benefits.⁹

Since the referee physicians found no objective evidence of any residuals related to appellant's accepted condition, the Board finds that the Office has met its burden of showing that appellant's employment-related condition had resolved as of May 25, 2001.

LEGAL PRECEDENT -- ISSUE 2

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant.¹⁰

ANALYSIS -- ISSUE 2

Given that the Board has found that the Office properly relied upon the opinions of the impartial medical examiners in terminating compensation, the burden of proof shifts to appellant

⁹ See *Raj B. Thackurdeen*, 54 ECAB ____ (Docket No. 02-2392, issued February 13, 2003).

¹⁰ *Franklin D. Haislah*, 52 ECAB 457 (2001).

to establish that she remains entitled to compensation after that date.¹¹ To establish causal relationship between the claimed disability and the employment injury, appellant must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.¹²

Following the termination of compensation, appellant submitted numerous duty status reports signed by Dr. Harbin, reflecting that appellant suffered continuing disability as a result of her employment injury. In an August 23, 2004 report, Dr. Harbin opined that appellant would be “totally impaired for life.” He stated that her inability to sit or stand for any prolonged period of time without increasing her pain level, precluded the possibility of her returning to work. He further noted that appellant suffered from depression as a result of her inability to be gainfully employed. However, none of his reports explained how appellant’s diagnosed condition was causally related to the accepted employment injury. Therefore, the reports lack probative value.¹³ Likewise, Dr. Safman’s reports lack probative value in that they fail to provide an opinion as to a causal relationship between appellant’s diagnosed condition and the accepted employment injury. While Dr. Safman’s reports describe appellant’s alleged current condition, they fail to establish that she had residuals related to her accepted condition.

Appellant has not provided rationalized medical opinion evidence based on a complete factual and medical background supporting a causal relationship between her current condition and the accepted employment injury.¹⁴ The Board finds that appellant has failed to establish that she had continuing disability after May 25, 2001 causally related to her accepted employment injury.

CONCLUSION

The Office met its burden of proof in terminating appellant’s medical and wage-loss benefits effective May 25, 2001. Appellant has not established that she had continuing disability caused by the accepted injury after May 25, 2001.

¹¹ *Manuel Gill*, 52 ECAB 282 (2001).

¹² *Id.*

¹³ *Mary A. Ceglia*, 56 ECAB ____ (Docket No. 04-113, issued July 22, 2004).

¹⁴ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 25, 2005 is affirmed.

Issued: October 12, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board