

By decision dated January 13, 2003, the Office terminated appellant's compensation benefits effective January 9, 2003 on the basis that her injury-related disability had ceased. This decision was reversed by an Office hearing representative in a March 12, 1993 decision finding that the Office had not met its burden of proof to terminate her compensation. By decision dated May 10, 1994, the Office found that appellant forfeited her entitlement to compensation from July 1987 to February 1991 for failing to report her earnings during this period. Appellant appealed this decision to the Board, which found that she forfeited her entitlement to compensation for only a portion of this period.¹

On December 6, 2002 appellant's attending orthopedic surgeon, Dr. John Sazy, sets forth work tolerance limitations indicating that appellant could not perform any of the listed activities. By letter dated April 23, 2003, the Office advised Dr. Sazy that it needed a comprehensive medical report supporting that appellant's continued disability was the result of the accepted work condition. In a January 22, 2004 report, Dr. Craig Danshaw, an osteopath, diagnosed lumbar radiculitis and degenerative joint disc disease at L3-4 and L4-5. Dr. Danshaw administered three lumbar epidural steroid injections in February and March 2004. By letter dated June 18, 2004, the Office advised Dr. Sazy that appellant was working and requested a report including objective findings and current work tolerance limitations.

On July 14, 2004 the Office referred appellant to Dr. Robert Chouteau, an osteopath, for a second opinion evaluation of her condition and her ability to work. In an August 24, 2004 report, Dr. Chouteau stated that appellant did not provide consistent effort on a functional capacity evaluation that day, but that the evaluation was valid and showed she could perform sedentary to light work. He diagnosed thoracic and lumbar myositis/strain; lumbar spondylosis with Grade 1 retrolisthesis L2-3, which was seen on August 17, 2004 x-rays; left S1 radiculopathy, which was suggested by an August 24, 2004 electromyogram and nerve conduction studies; and bilateral sacroiliac joint lumbar dysfunction. Dr. Chouteau listed objective findings on physical examination of weakness of the left extensor hallucis longus, altered Achilles reflex on the left and point tenderness on palpation of the bilateral sacroiliac joints and lumbar paraspinal musculature. In answer to the Office's question of whether the current findings were due to the effects of the work injury, he stated: "In my opinion, this is secondary to the injury of May 20, 1983."

The Office provided Dr. Sazy with a copy of Dr. Chouteau's report and again asked him whether appellant could work. In a November 8, 2004 report of her work tolerance limitations, Dr. Sazy indicated that appellant was limited in all the activities listed, but did not indicate the number of hours she was able to do any activity, stating that she was permanently disabled.

On May 25, 2005 the Office referred appellant, the case record and a statement of accepted facts to Dr. Robert Holladay, a Board-certified orthopedic surgeon, to resolve the conflict of medical opinion on her ability to work found between Dr. Sazy and Dr. Chouteau. In a June 17, 2005 report, Dr. Holladay stated that on physical examination that day appellant exhibited no objective neurological abnormality but many nonanatomical and nonphysiological changes particularly on straight leg raising. He stated that a functional capacity evaluation he

¹ Docket No. 94-1977 (issued July 14, 1997).

performed that day demonstrated lack of voluntary effort on almost all areas of testing, with some of appellant's responses defying gravity and indicating that she would be unable to move. He concluded that at a minimum she could perform light duty eight hours per day. In answer to the Office's question of whether the residuals of her work-related condition had resolved, Dr. Holladay stated:

"She has not had a documented objective structural change in her lower back. She has had primary complaints of pain. Her treatment for this condition has been excessive. The ongoing recurrent use of epidural steroid injections is neither curative nor therapeutic. The residuals from her original back injury have long since resolved. She has underlying preexisting degenerative spondylosis of her lumbar spine, which is due to aging and is unrelated to any specific injury event. This would be considered an ordinary disease of life. The work-related condition has resolved."

On July 18, 2005 the Office notified appellant that it proposed to terminate her compensation for the reason that her work-related condition of sprain/strain had resolved. In an August 9, 2005 letter, appellant stated that she needed time beyond the 30 days allotted to submit additional medical evidence and that she had an appointment with her doctor on August 19, 2005, who would send evidence of her medical status.

By decision dated August 23, 2005, the Office terminated appellant's compensation on the basis that her work-related condition had resolved.

LEGAL PRECEDENT

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.²

ANALYSIS

The Office accepted that appellant's July 20, 1983 employment injury resulted in a lumbar sprain. Appellant has other conditions of her low back, including disc bulges and degenerative disc disease shown by magnetic resonance imaging scans on May 12, 1993 and April 28, 1998. None of these additional conditions has been accepted as causally related to appellant's July 20, 1983 employment injury.

In a June 17, 2005 report, Dr. Holladay, a Board-certified orthopedic surgeon, concluded that the July 20, 1983 employment injury did not cause a structural change in her lower back, that the residuals from this injury had long since resolved and that the underlying preexisting degenerative spondylosis of her lumbar spine was due to aging and was unrelated to a specific injury. The report of Dr. Holladay is not that of an impartial medical specialist, as the only

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

conflict that existed at the time of the Office's referral to this specialist was on the question of appellant's ability to work. Although Dr. Holladay addressed this question, the Office, in terminating appellant's compensation, did not rely on Dr. Holladay's opinion on her ability to work but rather on his opinion that her injury-related condition had resolved.

Nonetheless, Dr. Holladay's report constitutes the weight of the medical evidence and is sufficient to establish that appellant's disability was no longer related to her employment injury. This report was based on an accurate history and supported by appropriate rationale. The August 24, 2004 report of Dr. Chouteau, to whom the Office referred appellant, concluded that her current findings were secondary to her July 20, 1983 employment injury, but did not provide any rationale for this opinion. The reports of appellant's attending orthopedic surgeon, Dr. Sazy, indicate that she cannot work, but they do not relate her disability to her accepted condition or explain how any additional low back condition is related to her employment.

CONCLUSION

The Office met its burden of proof to terminate appellant's compensation.

ORDER

IT IS HEREBY ORDERED THAT the August 23, 2005 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: April 20, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board