

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

Y.J., Appellant

and

**U.S. POSTAL SERVICE, MAIN POST OFFICE,
Detroit, MI, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 06-1181
Issued: September 22, 2006**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge

JURISDICTION

On April 24, 2006 appellant, through her attorney, filed a timely appeal of a February 9, 2006 merit decision of the Office of Workers' Compensation Programs, which denied modification of the termination of her compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this termination case.

ISSUES

The issues are: (1) whether the Office properly terminated appellant's compensation effective August 22, 2005 on the grounds that she no longer had any residuals or disability causally related to her employment-related lower back contusion and aggravation of degenerative disc disease at L4-5; and (2) whether appellant established that she had any continuing employment-related residuals or disability after August 22, 2005.

FACTUAL HISTORY

On August 29, 2001 appellant, then a 57-year-old distribution clerk, filed a traumatic injury claim alleging that on August 27, 2001 she sustained back pain when a coworker pushed a mail cart into her back. By letter dated September 10, 2001, the Office accepted her claim for

lower back contusion. The Office subsequently accepted appellant's claim for aggravation of degenerative disc disease at L4-5. The Office paid her appropriate compensation.

Appellant returned to limited-duty work on February 10, 2003. She stopped work on February 14, 2003. She has not returned to work.

The employing establishment submitted a November 13, 2003 medical report of Dr. Sandra L. Ellis, an internist and appellant's attending physician, which found that appellant, remained totally disabled due to her accepted lower back condition. She was unable to sit for prolonged periods.

By letter dated January 12, 2004, the Office requested that Dr. M. David Jackson, an attending physician,¹ submit a current medical report addressing the issue of whether appellant had any continuing residuals or disability due to the August 27, 2001 employment-related injuries within 30 days.

By letter dated January 21, 2004, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Norman L. Pollack, a Board-certified orthopedic surgeon, for a second opinion medical examination. In a February 4, 2004 report, Dr. Pollack provided his findings on physical examination and reviewed the results of a magnetic resonance imaging (MRI) scan and x-ray. He diagnosed very minimal spondylolisthesis at L4-5 and some decreased disc space indicative of degenerative disc disease at L4-S1. Dr. Pollack stated that the x-ray changes were not the result of the accepted employment injury. He further stated that the excessive tenderness and extreme loss of motion were suggestive of symptom promotion. Dr. Pollack opined that, based on the x-ray findings, appellant could return to work with restrictions, which included sitting and standing *ad lib*, no prolonged walking, pushing and pulling were limited to 50 pounds, lifting no more than 20 pounds and no climbing up ladders. Appellant's restrictions were likely permanent due to her underlying degenerative condition which was not likely to improve.

On February 23, 2004 Dr. Jackson stated that appellant had not been seen since June 3, 2003.

By letter dated March 10, 2004, the Office requested that Dr. Pollack provide additional information. It requested that he provide whether appellant had any continuing residuals related to the August 27, 2001 employment injuries and to her underlying degenerative condition. He was also asked to provide whether his permanent physical restrictions were due to the accepted employment injuries or underlying degenerative condition.

In a May 4, 2004 letter, Dr. Pollack stated that the x-ray changes which accounted for appellant's limitations were secondary to the August 27, 2001 employment injuries. The degenerative condition very likely preceded these injuries and likely caused a temporary aggravation. Dr. Pollack, however, stated that appellant's problem was solely due to the underlying degenerative arthritis condition.

¹ The Board notes that Dr. Jackson's professional qualifications are not contained in the case record.

By letter dated September 24, 2004, the Office requested that Dr. Ellis review Dr. Pollack's reports and provide her comments, particularly addressing appellant's ability to return to work and whether she required temporary or permanent restrictions. In an October 15, 2004 work capacity evaluation (Form OWCP-5c), Dr. Ellis stated that appellant was totally disabled with extensive degenerative changes to the lower spine. Her disability was due to a back injury which resulted in back pain.

The Office found a conflict in the medical opinion evidence between Dr. Ellis and Dr. Pollack regarding the issue of whether appellant had any continuing employment-related residuals or disability. To resolve the conflict, the Office, by letter dated April 8, 2005, referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Michael E. Kosinski, a Board-certified orthopedic surgeon, for an impartial medical examination.

In an April 25, 2005 report, Dr. Kosinski provided a history of the August 27, 2001 employment injuries and appellant's medical treatment, family and social background. He reported his findings on physical examination and reviewed MRI scan and x-ray findings. Dr. Kosinski opined that appellant had degenerative spondylolisthesis at L4-5, which was not a traumatic lesion. He noted that being bumped with a cart did not cause this problem. Degenerative spondylolisthesis can be symptomatic of low backache but it was not caused by the August 27, 2001 employment injuries. Appellant provided evidence of symptom amplification during Dr. Kosinski's examination. Dr. Kosinski concluded that she could return to work.

By letter dated May 10, 2005, the Office requested that Dr. Kosinski clarify his opinion as to whether appellant had any continuing residuals of the accepted employment injuries and whether she could return to her date-of-injury job as a distribution clerk with or without restrictions.

In a May 13, 2005 letter, Dr. Kosinski stated that there was no evidence of any ongoing orthopedic condition involving the back related to the August 27, 2001 employment injuries. Appellant's subjective complaints were related to degenerative spondylolisthesis. Certain acts such as, heavy lifting or repetitive bending whether at home or work, may bring on symptoms but these acts did not cause or aggravate the underlying condition. Dr. Kosinski opined that appellant could return to her date-of-injury position.

By letter dated July 22, 2005, the Office issued a notice of proposed termination of appellant's compensation based on Dr. Kosinski's medical opinion. The Office provided 30 days in which appellant could respond to this notice.

Dr. Ellis' July 28, 2005 Form OWCP-5c reiterated that appellant was totally disabled with extensive degenerative changes of the lower lumbar spine due to a back injury and indicated that she had to use a cane to ambulate. In a May 18, 2005 report, Dr. Jeffrey S. Fischgrund, a Board-certified orthopedic surgeon, diagnosed chronic back pain and spinal stenosis. He stated that, as appellant had been incapacitated from work for the past three years, it was doubtful that she would return to work.

By decision dated August 22, 2005, the Office terminated appellant's compensation benefits effective that date based on Dr. Kosinski's impartial medical opinion.

Appellant submitted an April 16, 2002 report of Dr. Michael J. Geoghegan, a Board-certified orthopedic surgeon, which found that she sustained degenerative disc disease with Grade 1 spondylolisthesis at L4-5. He opined that this condition was aggravated by direct trauma to the lower back and that appellant was totally disabled. He stated that there was no job that she could perform in a sitting position for more than one hour without experiencing increased pain. In an April 12, 2002 Form OWCP-5c, Dr. Geoghegan provided appellant's physical restrictions. On August 4, 2005 an MRI scan of the lumbar spine was performed by Dr. Stephen J. Pomeranz, a Board-certified radiologist, who found persistent anterolisthesis at L4-5 with facet arthropathy and ligamentous thickening contributing to central stenosis. He also found no ligamentous thickening at any level and no herniated nucleus pulposus. On August 22, 2005 Dr. Zachary J. Endress, a Board-certified orthopedic surgeon, diagnosed mild spinal stenosis at L4-5 secondary to back trauma.

By letter dated August 30, 2005, appellant requested reconsideration of the Office's August 22, 2005 decision. In an August 29, 2005 report, Dr. Ellis provided the results of the August 4, 2005 MRI scan. These results, when compared to studies performed in 2003, showed no interval change. Dr. Ellis noted that appellant continued to experience difficulty with standing and ambulating. She was unable to sit for a prolonged period of time due to pain in the middle and lower portions of her back. Dr. Ellis opined that appellant was unable to work at that time. A March 14, 2003 MRI scan of the lumbar spine demonstrated mild central canal spinal stenosis and minimal Grade 1 spondylolisthesis associated with moderate to marked bilateral facet arthropathy. These findings were similar to previous studies.

In a September 21, 2005 decision, the Office denied appellant's request for modification of the August 22, 2005 decision. The evidence submitted did not outweigh the special weight accorded to Dr. Kosinski's medical opinion as an impartial medical specialist.

On September 22 and October 9, 2005 appellant requested reconsideration. Dr. Endress' September 20, 2005 report provided a history of the August 27, 2001 employment injuries. A recent MRI scan revealed Grade 1 retrolisthesis at L1-2, degenerative disc disease at L4-5 and Grade 1 anterolisthesis. Dr. Endress opined that appellant was disabled at that time and she was unable to return to work as a clerk. He further opined that her disability was caused by the August 2001 employment injuries. In a September 30, 2003 report, Dr. Endress found that because there was no other documented injury since August 2001, appellant's current back problems, which included spinal stenosis, Grade 1 retrolisthesis at L1-2 and degenerative disc disease at L4-5 were related to the August 27, 2001 employment injuries. He opined that she was not capable of any useful work activities at the employing establishment.

On November 1, 2005 the Office issued a decision, denying appellant's request for modification of the September 21, 2005 decision. It found that the evidence submitted failed to establish that she had any residuals or disability causally related to her August 27, 2001 employment injuries.

On January 12, 2006 appellant again requested reconsideration. A November 21, 2005 report contained the typed name of Dr. Justin Riutta, a Board-certified physiatrist, who performed an electromyogram and nerve conduction studies. He found acute chronic left radiculopathy at L5 and no evidence of polyneuropathy or myopathy. A September 23, 2005 report contained the typed name of Dr. Kathleen A. McCarroll, a Board-certified radiologist, who performed a computerized tomography scan of the lumbar spine. She found no evidence of epidural abscess with degenerative changes and mild spinal stenosis at L4-5. Dr. McCarroll diagnosed a benign hypodense lobulated simple appearing fluid collection adjacent to the right kidney and just lateral to the inferior vena cava. Dr. Endress' December 14, 2005 report reiterated the findings in his September 30, 2003 report.

By decision dated February 9, 2006, the Office denied appellant's request for modification of its prior decisions. The evidence submitted failed to outweigh the special weight accorded to Dr. Kosinski's medical opinion as an impartial medical specialist.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.² The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.³

Section 8123(a) of the Federal Employees' Compensation Act⁴ provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁵

ANALYSIS -- ISSUE 1

The Board notes that the Office properly determined that a conflict in the medical opinion evidence was created between Dr. Ellis, an attending physician and Dr. Pollack, an Office referral physician, as to whether appellant had any continuing residuals or disability causally related to her accepted employment-related lower back contusion and aggravation of degenerative disc disease at L4-5. Dr. Ellis opined that appellant continued to suffer residuals and disability due to the accepted August 27, 2001 employment injuries. Dr. Pollack opined that appellant had no continuing residuals of her employment-related conditions and that she could return to work with physical restrictions.

² *Jason C. Armstrong*, 40 ECAB 907 (1989).

³ *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁴ 5 U.S.C. § 8123(a).

⁵ *See Robert V. Disalvatore*, 54 ECAB 351 (2003).

The Office referred appellant to Dr. Kosinski, selected as the impartial medical specialist. After conducting a physical examination and reviewing appellant's medical records, which included MRI scan and x-ray findings, on April 25, 2005 he found no evidence of a current back condition related to the accepted employment-related conditions. Dr. Kosinski stated that appellant's subjective complaints were amplified and related to degenerative spondylolisthesis, which was not a traumatic lesion caused by the August 27, 2001 employment injuries. He opined that appellant could return to her date-of-injury job as a distribution clerk. In his supplemental opinion of May 13, 2005, Dr. Kosinski reported that there was no evidence of any continuing orthopedic condition involving the back related to the employment injuries and that appellant's subjective complaints were related to the underlying spondylolisthesis without any contribution by the employment.⁶

The Board finds that Dr. Kosinski's opinion is entitled to the special weight of an impartial medical specialist in finding that appellant no longer has any residuals or disability due to her accepted employment-related lower back contusion and aggravation of degenerative disc disease at L4-5 as it is sufficiently rationalized and based on a proper factual and medical background.⁷

LEGAL PRECEDENT -- ISSUE 2

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to her to establish that she had any disability causally related to her accepted injury.⁸ To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.⁹ Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹⁰ Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹¹

⁶ See *James L. Hearn*, 29 ECAB 278 (1978).

⁷ See *Robert V. Disalvatore*, *supra* note 5.

⁸ See *Manuel Gill*, 52 ECAB 282 (2001).

⁹ *Id.*

¹⁰ *Elizabeth Stanislav*, 49 ECAB 540 (1998).

¹¹ *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

ANALYSIS -- ISSUE 2

The relevant medical evidence regarding any employment-related residuals and disability after August 22, 2005 includes Dr. Endress' August 22, 2005 report, which found that appellant had mild spinal stenosis at L4-5 secondary to back trauma. In an August 29, 2005 report, he noted appellant's continuing back problems and opined that she was totally disabled at that time. Dr. Endress failed to address whether appellant's current back problems and total disability were caused by the August 27, 2001 employment injuries. His reports are insufficient to establish appellant's burden of proof.

Dr. Endress' September 20, 2005 report found that appellant had Grade 1 retrolisthesis at L1-2, degenerative disc disease at L4-5 and Grade 1 anterolisthesis. He opined that she was totally disabled due to the August 2001 employment injuries. In his September 30 and December 14, 2005 reports, Dr. Endress found that in the absence of another documented injury since August 2001, appellant's spinal stenosis, Grade 1 retrolisthesis at L1-2 and degenerative disc disease at L4-5 were related to the August 27, 2001 employment injuries. He opined that she was not capable of any useful work activities at the employing establishment. Dr. Endress failed to provide medical rationale explaining how or why appellant's current back problems and total disability were caused by the accepted employment injuries. His reports are, therefore, insufficient to establish appellant's burden of proof.

Appellant submitted unsigned reports. These reports have no probative value as the author(s) cannot be identified as a physician.¹² As the reports lack proper identification, they do not constitute probative medical evidence sufficient to establish appellant's burden of proof.¹³

As appellant has not submitted rationalized medical evidence establishing that she has any continuing residuals or disability causally related to her employment-related conditions, she has not met her burden of proof.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation effective August 22, 2005 on the grounds that she no longer had any residuals or disability causally related to her accepted employment-related lower back contusion and aggravation of degenerative disc disease at L4-5. The Board further finds that appellant has failed to establish that she had any continuing employment-related residuals or disability after August 22, 2005.

¹² *Ricky S. Storms*, 52 ECAB 349 (2001).

¹³ *See Merton J. Sills*, 39 ECAB 572 (1988).

ORDER

IT IS HEREBY ORDERED THAT the February 9, 2006 and November 1, September 21 and August 22, 2005 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 22, 2006
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board