

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

A.R., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Anchorage, AK, Employer)

**Docket No. 09-1586
Issued: May 6, 2010**

Appearances:
Appellant, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 11, 2009 appellant filed a timely appeal from a March 3, 2009 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly terminated appellant's compensation benefits effective March 3, 2009.

FACTUAL HISTORY

On June 9, 2003 appellant, then a 49-year-old data collection technician, filed a traumatic injury claim alleging that on June 5, 2003 she was bent over a tub of flats and when she straightened up, she felt a sharp pain at her tailbone at the spine while in the performance of duty. She did not initially stop work but subsequently missed work intermittently. Appellant also began working with restrictions on lifting. The Office accepted the claim for a lumbosacral sprain and paid appropriate compensation benefits.

A June 9, 2003 x-ray of the lumbar spine, read by Dr. David Shea, a Board-certified diagnostic radiologist, revealed exaggerated lordosis at the lumbosacral junction with probable early degenerative changes at the posterior elements, L4-5 and L5-S1. On June 10, 2003 Dr. Byron E. Perkins, a Board-certified family practitioner and osteopath, examined appellant and placed her off duty. He diagnosed an acute lumbosacral strain at the right sacroiliac joint and a right shoulder strain. On August 8, 2003 Dr. Perkins released appellant to light duty with 10 pounds of intermittent lifting and no kneeling. He continued to treat her and note her disability status.

On February 4, 2004 appellant accepted a permanent modified assignment as a data collection technician. The restrictions included no lifting over 10 pounds for four hours, and no more than two hours twisting. In an April 28, 2004 report, Dr. Perkins diagnosed chronic lumbosacral strain, fibromyalgia syndrome, weight loss and somatic dysfunction of the lumbosacral spine, thoracic spine and cervical spine. He continued to treat appellant and prescribe restrictions.

On October 19, 2005 appellant was examined by Dr. Michael Coe, a Board-certified orthopedic surgeon and second opinion physician, who opined that appellant's accepted condition of lumbosacral sprain had completely resolved. Dr. Coe opined that appellant's low back symptoms were due to her underlying degenerative disc disease on a more-likely-than-not basis. He opined that there were external factors which might be contributing to her condition, which included a history of anxiety and depression. Dr. Coe explained that appellant should be able to return to her date-of-injury position when solely considering the accepted condition of lumbar sprain.

On December 14, 2005 Dr. Perkins disagreed with Dr. Coe. He opined that appellant continued to have a lumbosacral sprain/strain due to the June 5, 2003 work injury, and her low back symptoms were not due to her underlying degenerative disc disease.

In a July 10, 2006 report, Dr. Charles J. Kase, a Board-certified orthopedic surgeon and impartial medical examiner, noted appellant's history of injury and treatment.¹ He diagnosed chronic low back syndrome and psychological factors affecting her physical condition. Dr. Kase explained that appellant's work-related injury resulted in a material aggravation to a preexisting condition. He explained that the extensive medical reports of bad pain and treatment predate the work-related incident. Dr. Kase advised that appellant's condition was permanent.

In a February 18, 2008 report, Dr. Perkins noted that appellant was seen for chronic right sacroiliac pain and generalized low back pain. He advised that she went "to Phoenix from February 3 [to] 16, [2008] and was able to exercise there. Appellant felt a little bit better but developed some neck and upper back pain carrying her bags, *etc.*" Dr. Perkins also advised that appellant indicated that sit-ups made her back sore. He opined that appellant had a permanent chronic right sacroiliac pain since her June 5, 2003 work-related injury. Dr. Perkins also indicated that appellant was likely to develop arthritis of the spine and explained that it was "a common life occurrence in many folks." He noted that appellant had underlying fibromyalgia

¹ On June 12, 2006 the Office referred appellant to Dr. Kase, for an impartial medical evaluation to resolve the conflict between Drs. Coe and Perkins.

which was an aggravating factor. Dr. Perkins diagnosed chronic right sacroiliac sprain, somatic dysfunction, lumbosacral, thoracic, cervical spine and nicotine dependence.

In an October 6, 2008 duty status report, Dr. Perkins diagnosed a chronic lumbar strain and fibromyalgia. He advised that appellant could return to work with several restrictions, including a 10-pound lifting restriction for no more than four hours a day. Dr. Perkins checked the box “yes” in response to whether interpersonal relations were affected because of a neuropsychiatric condition and filled in “work stress aggravates fibromyalgia pain.”

On October 7, 2008 the Office referred appellant to Dr. Joan Sullivan, a Board-certified orthopedic surgeon, for a second opinion examination to determine the extent of appellant’s continuing disability and residuals from the employment-related injury.

In a November 11, 2008 report, Dr. Sullivan described appellant’s history of injury and treatment. Examination elicited pain complaints over the sacrum with deep palpation over the lumbar spine and pain with compression over the left sacroiliac joint and none over the right. Dr. Sullivan explained that appellant had no costovertebral angle tenderness and no tenderness over her greater trochanters. She found that on Patrick testing, appellant reported buttock pain bilaterally, and that she had negative straight leg raises in both the seated and supine position. Appellant had a negative Trendelenburg test, a normal thoracic lumbar curve, equal symmetrical range of motion of her hips, knees and ankles, no peripheral edema and posterior tibial pulses were “2+.” Neurologic examination revealed a normal tandem gait, heel-to-toe walking was done without difficulty and normal motor strength in her lower extremities. Sensory examination was normal to sharp in all dermatomes. Appellant reported some decreased perception to sharpness over the dorsum of the left distal foot over the proximal to the toes but was otherwise normal. Vibratory and temperature sensation were normal.

Dr. Sullivan diagnosed lumbar sprain related to the June 5, 2003 injury. She advised that appellant had very mild degenerative changes at L5-S1 and L4-5, which preexisted the industrial injury, chronic low back pain, which was unrelated to the industrial injury and possible fibromyalgia. Dr. Sullivan noted that appellant had a history of depression and anxiety and referred the question of its relationship to appellant’s work injury to a psychiatrist. She indicated that appellant had multiple pain complaints; but there was no objective medical evidence to support the continued residuals. Dr. Sullivan explained that “on the day of her injury, she simply bent over. She was not in the act of lifting anything.” Dr. Sullivan also noted that appellant had a preexisting history of back complaints that included chiropractic management before the work injury. She explained that this could not be considered a “lighting up” of mild degenerative disease in the lumbar spine. Dr. Sullivan noted that there was a question of appellant having a right sacroiliac joint injury and while she found some hypermobility on examination, she explained that it was “difficult, based on the mechanism of what she was doing on that day, to explain this as taking place on the date of injury.”

Dr. Sullivan indicated that she could not identify physical evidence to support appellant’s ongoing symptoms and opined that the residuals of the minor sprain of June 5, 2003 had resolved. She explained that her rationale was based on the length of time involved, the minimal effort appellant was making on that day and the minimal objective findings. Dr. Sullivan also advised that fibromyalgia might explain her ongoing symptomatology, but it was not a work-

related condition. She opined that appellant did not have any physical limitations as a result of the June 5, 2003 lumbar sprain. Dr. Sullivan noted that appellant “most probably does have physical limitations that are from probable fibromyalgia and may well have musculoskeletal complaints secondary to ongoing depression.” She opined that appellant was capable of returning to her date-of-injury job as a data collection technician based on the lumbar sprain and noted that no further medical treatment was needed for the accepted condition. Dr. Sullivan advised that, while she would need work modifications, those modifications were based on nonindustrially-related conditions. In an accompanying work restriction evaluation form, she set forth appellant’s work restrictions and advised that, while the restrictions were permanent, they were based on nonindustrial conditions.

On January 8, 2009 the Office proposed to terminate appellant’s compensation finding that the weight of the medical evidence, as represented by the report of Dr. Sullivan, established that the residuals of the work injury of June 5, 2003 had ceased.

Appellant submitted additional evidence, which included an October 22, 2008 report from Dr. Ramzi Nassar, a Board-certified psychiatrist, which noted that he was treating appellant for a mood disorder due to a general medical condition which included a back injury and chronic pain since July 2003. Dr. Nassar opined that appellant had “prominent depressive symptoms and mood symptoms due to the intractable pain that she is struggling with.” He noted that appellant was on medication and advised that her mood symptoms waxed and waned and were dependent on the amount of pain and discomfort she was suffering.

In a January 25, 2009 statement, appellant indicated that she had problems with the Office’s physicians which included “lying,” not testing her back and “saying I was okay.” She indicated that there appeared to be an issue with the fact that she had been “seeing a chiropractor a lot over the years. For over 21 years.” Appellant further alleged that her depression occurred after her back injury as she had never seen a psychiatrist before her injury. She further alleged that, before she hurt her back, she “was pretty limber. I worked in our garden, green house and flowerbeds and enjoyed it. It’s been almost six years of doing nothing most of the time except at work. When I get home each night, I usually lie in bed. In the summer, with ice on my back.” Additionally, appellant advised the Office that she wanted to choose her own second opinion to ensure that the physician was not biased. She also described her activities at work for the previous 26 years that included numerous repetitive activities.

By decision dated March 3, 2009, the Office terminated appellant’s compensation benefits effective that date.

LEGAL PRECEDENT

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.² Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation

² *Curtis Hall*, 45 ECAB 316 (1994).

without establishing either that the disability has ceased or that it is no longer related to the employment.³

ANALYSIS

The Office accepted that appellant sustained a lumbosacral sprain on June 5, 2003. On October 7, 2008 it referred appellant to Dr. Sullivan for a second opinion evaluation regarding her continuing disability and residuals from the employment-related injury.

In a November 11, 2008 report, Dr. Sullivan described appellant's history of injury and treatment. She also examined appellant and noted findings which included pain over the sacrum and pain with compression over the left sacroiliac joint and buttocks. Dr. Sullivan was unable to identify physical evidence to support appellant's ongoing symptoms and opined that the residuals of the minor sprain of June 5, 2003 had resolved. She explained that she based her conclusion on "the length of time involved, the minimal effort she was making on that day and the minimal objective findings." While Dr. Sullivan advised that, while appellant might have fibromyalgia, and some restrictions related to that condition, it was not a work-related condition. She concluded that appellant did not have any physical limitations as a result of the lumbar sprain of June 5, 2003. Dr. Sullivan opined that appellant was capable of returning to her date-of-injury job as a data collection technician and noted that no further medical treatment was needed based on the accepted condition. She advised that, while she would need work modifications, those modifications were based on nonindustrially-related conditions.

Dr. Sullivan found no basis on which to attribute any continuing condition, residuals or disability to the June 5, 2003 lumbosacral sprain. Her report is comprehensive, well rationalized and based on an accurate factual and medical history. The Board finds that this report represents the weight of the medical evidence and establishes that appellant's June 5, 2003 lumbosacral strain resolved without residual. There is no other contemporaneous medical evidence establishing that appellant remained disabled or continued to experience residuals of her accepted lumbosacral sprain. Accordingly, the Office met its burden of proof to justify termination of benefits.

Appellant submitted a report from Dr. Nassar, who noted treating appellant for a mood disorder due to a back injury and chronic pain since June 2003. The Board notes that the Office has not accepted any emotional condition caused by the work injury.⁴ Dr. Nassar did not present a specific and reasoned opinion explaining how any particular diagnosed emotional condition was causally related to the June 5, 2003 lumbosacral strain that occurred when appellant straightened up after bending over a tub of flats. The lack of reasoning in support of causal relationship is significant since the record reflects that appellant has a preexisting back condition. Thus, Dr. Nassar's report is insufficient to show that the June 5, 2003 work injury caused or aggravated an emotional condition.

³ *Jason C. Armstrong*, 40 ECAB 907 (1989).

⁴ *See T.M.*, 60 ECAB ___ (Docket No. 08-975, issued February 6, 2009) (for conditions not accepted or approved by the Office as being employment related, the claimant bears the burden of proof to establish that the condition is causally related to the employment injury through the submission of rationalized medical evidence).

The Board also notes that appellant generally alleged that she was not satisfied with the examination of Dr. Sullivan or any of the Office physicians; however, she has not provided any evidence to support her assertions that Dr. Sullivan's examination was improper. Appellant alleged that she never saw a psychiatrist until her work condition; however, as noted above, the Office did not accept an emotional condition and it has not been shown to have arisen from the accepted condition. Additionally, the Board has held that neither the fact that a condition became apparent during a period of employment nor the belief of the claimant that the condition was caused or aggravated by employment factors is sufficient to establish causal relation.⁵

CONCLUSION

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits effective March 3, 2009.⁶

ORDER

IT IS HEREBY ORDERED THAT the March 3, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 6, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

⁵ A.C., 60 ECAB ___ (Docket No. 08-1453, issued November 18, 2008).

⁶ The Board notes that appellant may wish to file an occupational disease claim as she has described activities at work that cover a 26-year period.