

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

A.E., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Los Angeles, CA, Employer)

**Docket No. 10-1862
Issued: May 11, 2011**

Appearances:

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 7, 2010 appellant, through counsel, filed a timely appeal from a June 1, 2010 decision of the Office of Workers' Compensation Programs. Pursuant to the Federal Employees' Compensation Act¹ and 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 compensation and medical benefits effective December 16, 2009 on the grounds that she had no residuals of the accepted lumbar sprain; and (2) whether appellant established that her claim should be expanded to include lumbar radiculopathy due to the accepted employment injury.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 30, 2008 appellant, then a 53-year-old mail processor, filed an occupational disease claim alleging that she sustained a lower back injury as a result of employment activities. In a September 18, 2008 report, Dr. Michael S. Than, a Board-certified family practitioner, noted that her work activities included lots of “pulling, pushing, manual labor.” He diagnosed lower back strain, which he attributed to appellant’s job duties. In an October 22, 2008 report, Dr. Victoria M. Wakeley, a Board-certified family practitioner, related appellant’s complaints of a tingling sensation in the bilateral anterior thighs and lower back pain, which worsened with lifting at work. On October 24, 2008 she diagnosed lower back pain and recommended restrictions to appellant’s physical activity.

On November 13, 2008 the Office accepted that appellant sustained an employment-related lumbar sprain.² On December 24, 2008 Dr. Wakeley diagnosed lumbar radiculopathy and recommended modified activity until January 21, 2009.

Appellant was treated by Dr. John Barchilon, a physician specializing in occupational medicine. On January 26, 2009 Dr. Barchilon reported her complaints of low back pain, tingling and numbness of both legs. Appellant had a prior work-related low back injury in October 2007. On September 4, 2008 she felt sudden low back pain while lifting a tray full of mail at work. Dr. Barchilon diagnosed lumbar strain, lumbar radiculopathy and lumbar degenerative joint disease (DJD), not work related. He opined that “the injury is work related and should be covered under the workers’ compensation guidelines for compensability.” Dr. Barchilon released appellant to return to modified duty with restrictions.

On June 16, 2009 Dr. Barchilon related appellant’s complaints of intermittent tingling in her right leg. He diagnosed lumbar radiculopathy and lumbar DJD, not work related. Dr. Barchilon reviewed the results of an April 25, 2009 magnetic resonance imaging (MRI) scan of the lumbar spine, which he described as “normal.” A recent electromyogram (EMG) showed no electromyographic evidence of right or left lumbar motor radiculopathy. Dr. Barchilon stated that appellant was definitely having paresthesia [symptoms] of a fairly persistent nature,” noting that “EMR is not 100 percent sensitive or specific.”

On August 24, 2009 Dr. Barchilon reported that appellant was experiencing tingling down both legs and constant pressure in the low back. He diagnosed lumbar radiculopathy, lumbar DJD and lumbar strain, resolved and recommended permanent work restrictions, including no repetitive lifting over 10 pounds, no repetitive bending, climbing, or twisting and no repetitive climbing of ladders.

The Office referred appellant to Dr. G.B. Ha’ Eri, a Board-certified orthopedic surgeon, for examination and an opinion as to whether she had any residuals from the accepted injury and, if so, whether she was disabled as a result of remaining residuals. In an October 23, 2009 report, Dr. Ha’ Eri reviewed the history of injury and noted a prior history of a back injury in 2007. He also reviewed the statement of accepted facts and medical record. Dr. Ha’ Eri noted appellant’s

² Appellant’s October 10, 1999 traumatic injury claim was accepted for sprain of the knee and leg. (File No. xxxxxx453). Her October 16, 2007 traumatic injury claim was accepted for lumbar strain. (File No. xxxxxx074).

complaint of intermittent slight lower back pain brought on by physical activity. Examination of the lumbar spine demonstrated no paravertebral muscle spasm or tenderness. Visual inspection revealed normal lumbar lordosis. On range of motion testing, extension was to 20 degrees, lateral bending was to 30 degrees bilaterally, lateral rotation was to 40 degrees bilaterally. Straight leg raising was to 90 degrees bilaterally. Dr. Ha' Eri reviewed diagnostic test results, noting a normal MRI scan on April 25, 2009, no significant abnormality revealed in a March 30, 2009 EMG of the lower extremity and mild degenerative changes on an October 23, 2008 x-ray of the lumbar spine. By history, he diagnosed lumbar sprain, which he found had resolved, noting that there were no objective clinical findings to support the persistence of a diagnosis of lumbar sprain. Dr. Ha' Eri found that appellant was not disabled, but could work full time in her date-of-injury position without restrictions.

On November 17, 2009 the Office proposed to terminate appellant's compensation and medical benefits, finding that the weight of medical opinion was represented by the report of Dr. Ha' Eri. Appellant no longer had residuals or disability due to the accepted employment injury and could return to her regular job. She was given 30 days to respond to the proposed termination.

In a December 19, 2009 decision, the Office terminated appellant's compensation benefits effective December 16, 2009.

On January 6, 2010 appellant, through her attorney, requested a telephonic conference. She submitted a December 7, 2009 report from Dr. Barchilon responding to the Office's preliminary finding that her accepted condition had resolved. Dr. Barchilon stated that only the soft tissue component of the injury had resolved, and that the "much more serious bone-joint nerve radicle component, *i.e.*, her radiculopathy, persisted at the time of the most recent examination." On February 1, 2010 he reiterated his opinion that appellant continued to experience residuals in the form of radiculopathy. Dr. Barchilon stated that she had "permanent work restrictions caused by her workplace injury of September 4, 2008."

During a March 10, 2010 telephonic hearing, appellant's representative argued that her case should be upgraded to accept the condition of lumbar radiculopathy, which he contended was a continuing residual of the accepted injury. Counsel further argued that the second opinion physician should have addressed the radiculopathy diagnosis.

In a June 1, 2010 decision, an Office hearing representative affirmed the December 19, 2009 decision, finding that the work-related lumbar strain had resolved by August 24, 2009 and objective clinical evidence of record did not support a more serious diagnosis.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of an employee's benefits. It may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.³

³ *Jaja K. Asaramo*, 55 ECAB 200 (2004).

The Office's burden of proof in terminating compensation includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁵ 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

ANALYSIS -- ISSUE 1

The weight of the medical evidence establishes that appellant's accepted lumbar sprain had resolved by December 16, 2009. The Board finds, therefore, that the Office met its burden of proof to terminate appellant's compensation and medical benefits as of December 16, 2009 for the accepted lumbar sprain condition.

On August 24, 2009 Dr. Barchilon reported that appellant was experiencing tingling down both legs and constant pressure in the low back. He diagnosed lumbar radiculopathy and lumbar DJD, noting that appellant's lumbar strain had resolved.

In an October 23, 2009 second opinion report, Dr. Ha' Eri reviewed the history of injury and noted a prior back injury in 2007. He also reviewed the statement of accepted facts and medical record. Dr. Ha' Eri noted appellant's complaint of intermittent slight lower back pain brought on by physical activity. Examination of the lumbar spine demonstrated no paravertebral muscle spasm or tenderness. Visual inspection revealed normal lumbar lordosis. Range of motion testing was within normal limits. Dr. Ha' Eri reviewed diagnostic test results, noting a normal MRI scan on April 25, 2009, no significant abnormality in a March 30, 2009 EMG of the lower extremity and mild degenerative changes on an October 23, 2008 x-ray of the lumbar spine. Based on the fact that there were no objective findings to support the persistence of a diagnosis of lumbar sprain, he opined that the accepted lumbar sprain condition had resolved. Dr. Ha' Eri found that appellant was not disabled, but could work full time in her date-of-injury position without restrictions.

Responding to the Office's preliminary finding that appellant's accepted condition had resolved, Dr. Barchilon stated that only the soft tissue component of the injury had resolved, and that the "much more serious bone-joint nerve radicle component, *i.e.*, her radiculopathy, persisted at the time of his most recent examination on August 24, 2009. He stated that she had permanent work restrictions caused by her workplace injury of September 4, 2008. The Board notes, however, that the condition of radiculopathy was never accepted by the Office. Dr. Barchilon did not provide any explanation, based on a thorough examination, to support his opinion of continuing disability due to the accepted lumbar sprain. In fact, he agreed that the accepted condition had resolved.

⁴ *Id.*

⁵ *T.P.*, 58 ECAB 524 (2007).

⁶ *I.J.*, 59 ECAB 408 (2008); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

Rationalized medical opinion evidence is medical evidence which includes a physician's opinion addressing the causal relationship between a claimant's diagnosed condition and the accepted employment injury. To be probative, the opinion of a physician must be based on a complete factual and medical background of the employee, 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 employment factor accepted in the case.⁷ There is no rationalized medical evidence from Dr. Barchilon, or any other physician, explaining how the accepted lumbar sprain caused or contributed to any continuing disability. His reports are insufficient to form a conflict with the well-reasoned opinion of Dr. Ha' Eri.

The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁸ The Board finds that the weight of the medical evidence rests with the October 23, 2009 report of Dr. Ha' Eri. He provided a comprehensive evaluation based on his review of the statement of accepted facts and medical record, the history of injury, appellant's complaints of continued pain in multiple areas, and findings on physical examination. Dr. Ha' Eri advised that appellant had no residuals of her accepted lumbar sprain. Appellant was found capable of returning to her usual job of mail processor without restriction. The Board finds that the Office properly terminated her compensation and medical benefits effective December 16, 2009 relating to the accepted lumbar sprain.

LEGAL PRECEDENT -- ISSUE 2

Where an employee claims that a condition not accepted or approved by the Office was due to an employment injury, she bears the burden of proof to establish that the condition is causally related to the employment injury.⁹ To establish a causal relationship between the condition claimed, as well as any attendant disability, and the employment event or incident, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such a causal relationship.¹⁰ Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.¹¹ Rationalized medical evidence is 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 rationalized medical evidence explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹² Neither the fact that a disease or condition manifests itself

⁷ *Sedi L. Graham*, 57 ECAB 494 (2006).

⁸ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

⁹ *Jaja K. Asaramo*, *supra* note 3.

¹⁰ *Jennifer Atkerson*, 55 ECAB 317 (2004).

¹¹ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹² *Leslie C. Moore*, 52 ECAB 132 (2000).

during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.¹³

ANALYSIS -- ISSUE 2

The Board finds that this case is not in posture for a decision as to whether appellant's claim should be accepted for lumbar radiculopathy due to the employment injury.

The Office accepted appellant's claim for lumbar sprain. Dr. Barchilon, however, also diagnosed lumbar radiculopathy, which he opined was work related. He reported appellant's complaints of intermittent tingling down both legs and constant pressure in the low back. Although results of diagnostic testing were normal, Dr. Barchilon stated that appellant was "definitely having paresthesia [symptoms] of a fairly persistent nature." On December 7, 2009 he opined that, although the soft tissue component of the accepted injury had resolved, the much more serious bone-joint nerve radicle component, *i.e.*, her radiculopathy, persisted." On February 1, 2010 Dr. Barchilon provided permanent work restrictions, which he opined were necessitated by her accepted injury.

The Board finds that the medical evidence of record generally supports a causal relationship between appellant's diagnosed lumbar radiculopathy and the accepted injury. Although Dr. Barchilon did not provide a fully-rationalized report sufficient to establish appellant's claim, his opinion stands uncontroverted in the record and is, therefore, sufficient to require further development of the case by the Office.¹⁴

The Office sought an opinion from Dr. Ha' Eri as to whether appellant had any residuals from the accepted injury. Dr. Ha' Eri opined that the lumbar sprain had resolved. He did not, however, address appellant's diagnosed lumbar radiculopathy or Dr. Barchilon's opinion that the radicular condition was causally related to the accepted injury. Therefore, Dr. Ha' Eri's report requires clarification and elaboration. Once the Office undertook to develop the medical evidence further by obtaining a second opinion, it had the responsibility to do so in a proper manner.¹⁵ Proceedings under the Act are not adversarial in nature and the Office is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility to see that justice is done.¹⁶ Accordingly, the Board will remand the case to the Office for further development regarding Dr. Ha' Eri's opinion. The Office should prepare a statement of accepted facts and request that Dr. Ha' Eri submit a supplemental report. If Dr. Ha' Eri is unable or unwilling to provide such a report, the case should be referred to an appropriate specialist to obtain a rationalized opinion as to whether appellant developed a lumbar radiculopathy condition causally related to her accepted injury. Following this and any other development deemed necessary, the Office shall issue an appropriate decision in the case.

¹³ *Ernest St. Pierre*, 51 ECAB 623 (2000).

¹⁴ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 280 (1978).

¹⁵ *Melvin James*, 55 ECAB 406 (2004).

¹⁶ *Jimmy A. Hammons*, 51 ECAB 219 (1999); *Marco A. Padilla*, 51 ECAB 202 (1999); *John W. Butler*, 39 ECAB 852 (1988).

CONCLUSION

The Board finds that the Office met its burden of proof to terminate appellant's compensation and benefits effective December 16, 2009 related to the accepted lumbar sprain condition. The case is not in posture for a decision as to whether appellant has established that her claim should be expanded to include lumbar radiculopathy due to the accepted employment injury.

ORDER

IT IS HEREBY ORDERED THAT the June 1, 2010 decision of the Office of Workers' Compensation Programs is affirmed regarding the termination of medical and compensation benefits relating to the accepted condition of lumbar sprain. The case is remanded to the Office for further development on the issue of whether the claim should be expanded to include the condition of lumbar radiculopathy.

Issued: May 11, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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