

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GENEVA POLINI and DEPARTMENT OF DEFENSE,
DEFENSE PERSONNEL SUPPORT CENTER, Philadelphia, PA

*Docket No. 01-1370; Submitted on the Record;
Issued March 14, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits.

On July 29, 1999 appellant, then a 41-year-old contract specialist/program manager, sustained neck and low back pain injuries in the performance of duty, when she was rear ended while riding in a cab. She stopped work on July 30, 1999 and returned on August 3, 1999, went out again and returned to light duty on August 5, 1999. Appellant filed a traumatic injury claim, which the Office accepted for cervical and lumbar strains on August 26, 1999.

In a September 8, 1999 magnetic resonance imaging (MRI) scan, Dr. Eric Bosworth, a radiologist, found that there was spondylosis at the C5-6 level which was associated with a small central disc herniation, which produces mild central stenosis at this level. He further noted mild/moderate right neural foraminal narrowing; however, he stated there was no significant left-sided neural foraminal narrowing at this level.

On January 3, 2000 the Office referred appellant along with a statement of accepted facts and a copy of the case record to Dr. Steven Valentino, D.O., an osteopath, for a second opinion evaluation on February 3, 2000 as to the nature and extent of appellant's work-related disability.

In a January 12, 2000 report, Dr. Dan J. Gzesh, Board-certified in psychiatry and neurology, noted appellant's history of injury and treatment. In particular, he noted that yesterday, she returned to work for the first time and felt worse than usual. Dr. Gzesh's impression was that appellant had symptoms consistent with cervical and lumbar radiculopathy, however, other than being hyperflexic, appellant did not have any other objective symptoms. He did note the presence of Adson's on the right. Dr. Gzesh opined that appellant's pain symptoms were multifactorial, as there was evidence of both cervical radiculopathy and thoracic outlet syndrome. He further opined that he was told that an electromyogram (EMG) was performed which was consistent with a pinched nerve, but he was not clear which nerve was referred to.

Dr. Gzesh recommended continuing appellant's physical therapy, which if unsuccessful; a trial of local anesthesia might be possible. He further stated that "surgical decompression of her neck may ultimately be in the best interest." Dr. Gzesh concluded by stating that appellant should continue with conservative care for now.

In a January 22, 2000 report, Dr. Amelia L.A. Tabuena, a physiatrist, noted appellant's history of injury and treatment, including her return to work on January 21, 2000, noting that she tolerated the work fairly. She opined that appellant had an unresolved severe cervical and upper thoracic sprain and strain with spastic torticollis, aggravation of the spondylosis of the cervical spine, a herniated disc at C5-6 and she needed to rule out cervical radiculopathy. Dr. Tabuena recommended: an EMG and nerve conduction study (NCS) of the upper extremity to rule out cervical radiculopathy; consideration of epidural cervical injections and/or nerve blocks; isotonic neck exercises; transcutaneous electrical nerve stimulator unit for home use; cervical traction; instructions in a program for neck conservation measures and proper body biomechanics. She stated that appellant was a good candidate for a functional capacity evaluation to determine her physical capacity prior to return of any type of work.

In a January 27, 2000 medical report form, Dr. Vincent Baldino, D.O., an osteopath and appellant's treating physician, indicated appellant could return to work for six hours a day without restrictions.

In a February 3, 2000 second opinion report, Dr. Valentino noted appellant's history of injury and treatment, including her release to full duty for six hours a day in early January and continued increase in hours such that she was working full-time, full duty in her preinjury position. He further noted that appellant worked eight and one half-hours the previous day as a program manager. Dr. Valentino also noted that appellant was discharged from her physical therapy last week to an independent program. He reviewed the lumbar spine MRI dated August 27, 1999, which was normal and the cervical spine MRI and films, which revealed degenerative spondylosis at C5-6 associated with a small central disc herniation, which produced mild central stenosis. Dr. Valentino stated that this was also associated with mild/moderate right neural foraminal narrowing with no significant left-sided neural foraminal narrowing at the other levels. His physical examination showed appellant walking normally and without difficulty and the examination of the spine showed normal spinal curves without spasm. He noted that thoracolumbar and lumbosacral flexibility was complete, intact and painless. Dr. Valentino performed both classic and modified Spurling's maneuvers, along with sitting and supine straight leg raising and femoral stretch tests, which were all negative. He noted that evaluation of the spine revealed normal curves with no evidence of spasm. Dr. Valentino further conducted examinations of the occipital; sub occipital; and retroauricular area; costovertebral junction; thoracic cage; iliolumbar ligament and sacroiliac joint, which were all normal. His evaluation of the trapezius and rhomboids was also normal along with the neurological examination. Dr. Valentino also found that the deep tendon reflexes were equal and symmetric and a motor examination revealed normal motor strength, mass and tone without weakness or atrophy. He determined that the sensory examination was intact, myelopathy was absent and appellant had full range of motion in the upper extremity about the shoulders, elbows, wrists and hands. Dr. Valentino also indicated that the shoulder examination was negative for instability, impingement, sulcus testing, soft tissue or significant degenerative process. He found that the

elbow and wrist examinations were normal. Additionally, the Allen's, Wrights, Roos', Phalen's, reverse Phalen's, ulnar stretch and Tinel's signs were negative. Dr. Valentino stated that there was no evidence of any injury to the thoracic outlet or brachial plexus and RSD was absent. He further found that a lower extremity examination revealed full range of motion about the hips, knees, ankles and feet, the Fabere's tests were negative and there was no evidence of bursitis. Dr. Valentino also observed that knee and ankle examinations revealed an absence of synovitis, effusion, or internal derangement, the subtalar and plantar examinations were normal and the Tinel's signs and Waddell's tests were negative. His impression was that appellant's cervical and lumbar strains were resolved. Dr. Valentino further found that the exacerbation of cervical spondylosis had also resolved. He stated that appellant had recovered from her work-related incident, that she was capable of working full time in her preinjury position and she had reached maximum medical improvement. Dr. Valentino further opined that further medical care was not warranted at this point in time.

On March 6, 2000 the Office issued a proposed notice of termination of compensation. The Office advised appellant that her compensation for wage loss and medical benefits was being terminated because she no longer had any continuing injury-related disability. The Office indicated that the weight of the medical evidence, as demonstrated by the opinion of Dr. Valentino, demonstrated that appellant's work injury had resolved. Appellant was given 30 days to submit additional evidence or argument.

In a March 10, 2000 treatment note, Dr. Baldino indicated that appellant could not return to full duty but must remain at six hours a day.

By letter dated April 3, 2000, appellant responded to the proposed notice of termination by requesting an extension of time in order to forward the appropriate documentation.¹

By decision dated April 20, 2000, the Office finalized its proposed termination of benefits. The Office indicated that the weight of the medical evidence established that appellant no longer had any disability or medical condition causally related to the work injury of July 29, 1999.

In an April 3, 2000 report, received by the Office on April 26, 2000, Dr. Baldino stated that appellant's chief complaint was cervical pain with frequent radiating numbness in the distal left upper extremity. He noted that appellant reported significant relief from symptoms with intermittent cervical traction, ultrasound, massage and therapeutic exercise. Dr. Baldino noted that appellant was last treated in active physical therapy on January 19, 2000 when she returned to work and was placed on a home exercise program. He stated that treatment was medically necessary as the MRI was positive for herniated disc and the treatment was effective in returning appellant to work.

In an April 12, 2000 report, received by the Office on May 15, 2000, Dr. Gzesh opined that he still had not received her EMG report and that he believed appellant had suffered a

¹ In an April 20, 2000 memorandum, the Office noted that appellant requested an extension, but did not accommodate it.

significant injury causally related to her current symptomatology, which occurred on a work-related duty. He further stated that appellant was “concerned not with disability payments at this time, but rather about the fact that she might require surgery some day and would want it to be covered by her workers’ compensation.”

In a May 12, 2000 report, received by the Office on May 23, 2000, Dr. Baldino opined that appellant sustained a serious and permanent injury including discogenic/neurologic pathology and that these symptoms would continue for an indefinite period into the future requiring further evaluation and treatment.

In a May 19, 2000 letter, received by the Office on May 23, 2000, appellant requested a written review of the record.

In a decision dated August 17, 2000, the Office hearing representative affirmed the Office’s April 20, 2000 termination of benefits.

By letter dated September 11, 2000, appellant, through her representative, requested reconsideration and enclosed additional evidence.

On October 11, 2000 appellant, through her representative, again requested reconsideration and enclosed additional evidence.

In a September 25, 2000 report, Dr. Baldino opined that appellant still suffered from residuals of her work injury. He further opined that appellant’s disc herniation at C5-6 was directly caused by her work-related injury of July 29, 1999, based upon the fact that appellant did not have any condition relative to her neck or back prior to the work accident. Dr. Baldino stated that appellant continues to suffer neck pain with pain radiating into her upper extremities. He offered that, in addition to her cervical sprain and strain, she also suffered a cervical disc herniation as a result of the work-related accident and that her injuries were permanent.

By merit decision dated January 17, 2001, the Office denied modification of the prior decision on the grounds that the evidence submitted in support of the reconsideration request was not sufficient to warrant modification.

The Board finds that the Office met its burden of proof in terminating appellant’s compensation benefits effective January 11, 2001 on the grounds that her work-related disability had ceased by that date.

Once the Office accepts a claim it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.² 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.³ The Office’s burden includes the necessity of

² *Lawrence D. Price*, 47 ECAB 120 (1995).

³ *Id*; see *Patricia A. Keller*, 45 ECAB 278 (1993).

furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability, which continued after termination of compensation benefits.⁵

In this case, the Office accepted that appellant sustained cervical and lumbar strains and paid appropriate benefits.

Dr. Gzesh, appellant's treating physician, noted in his January 12, 2000 report that other than being "hyperflexive" she did not have any other objective symptoms and he opined that surgical decompression of her neck might be in her best interest. He concluded by stating appellant should continue with conservative care. Dr. Gzesh did not indicate that appellant's symptoms were work related or that she was disabled. He did not provide any opinion or rationale.⁶

In a January 22, 2000 report, Dr. Tabuena noted that appellant had returned to work and recommended several diagnostic studies. However, she did not indicate any of appellant's symptoms were work related or that she was unable to continue working.

Dr. Baldino, on January 27 and March 10, 2000, indicated that appellant could only do full duty for six hours a day and did not indicate that appellant was disabled due to her work-related injury. He did not provide any opinion or rationale on the issue of whether appellant's work-related condition had ceased.⁷

In this case, the Office accepted that appellant sustained cervical and lumbar strains. The Office paid appropriate medical benefits and subsequently referred appellant to Dr. Valentino for a second opinion evaluation. The Board finds that, at the time the Office terminated medical benefits, the weight of the medical evidence rested with Dr. Valentino, who submitted a thorough medical opinion based upon a complete and accurate factual and medical history. He performed a complete examination, reviewed the record and advised that appellant had no continued disability from her accepted employment injury, was capable of performing her usual employment and that further medical treatment was unnecessary. Dr. Valentino reviewed the diagnostic tests and found they were normal. He also noted that MRI scans and NCS were essentially normal. Dr. Valentino conducted a mass of physical tests and all findings were

⁴ *Raymond W. Behrens*, 50 ECAB 221 (1999).

⁵ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

⁶ *See Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale.)

⁷ *Id.*

essentially normal. He concluded his report by indicating that appellant had returned to her preinjury position, even working an 8½-hour day and was essentially recovered. Because Dr. Valentino provided the only rationalized medical opinion of record addressing whether appellant continued to suffer residuals of her accepted employment injury, his opinion constitutes the weight of the medical evidence.⁸

The Board, therefore, finds that Dr. Valentino's report established, at that time, that appellant ceased to have any disability or condition causally related to her employment injuries, thereby, justifying the Office's final termination of medical benefits effective April 20, 2000. The burden of proof, thereafter, shifts to appellant.

Subsequent to the Office's April 20, 2000 termination, appellant submitted additional reports from Drs. Baldino and Gzesh. However, these are of little probative value as neither doctor stated that appellant was disabled. Dr. Gzesh opined that appellant was fearful of future problems, but the Board has held that fear of future injury is not compensable.⁹ Dr. Baldino in his April 3, 2000 report stated that, treatment was medically necessary as the MRI was positive for herniated disc and the treatment was successful in returning to work. He did not offer an explanation of causal relationship or state that appellant's treatment was causally related to her employment. The Board has long held that medical opinions not containing rationale on causal relation are entitled to little probative value and are generally insufficient to meet appellant's burden of proof.¹⁰ In his May 12, 2000 report, Dr. Baldino opined that appellant's symptoms would continue indefinitely, but did not address the relation to appellant's employment injury or that she was disabled and unable to perform her duties. In his September 25, 2000 report, Dr. Baldino opined that appellant still suffered from residuals of work injury. He opined that she did not have any condition prior to the injury; therefore, it was related to her work injury. The Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury, is insufficient, without supporting rationale, to establish causal relation.¹¹ Without such medical rationale addressing the crucial issues of causal relationship and continuing disability, these reports are of greatly diminished probative value.¹²

Consequently, appellant has not established that her condition on and after April 20, 2000 was causally related to her accepted employment injury.¹³

⁸ *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996).

⁹ *Paul A. Clarke*, 43 ECAB 940 (1992).

¹⁰ *Carolyn F. Allen*, 47 ECAB 240 (1995).

¹¹ *Kimper Lee*, 45 ECAB 565 (1994).

¹² *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

¹³ In her appeal, appellant provided additional medical reports; however, the Board cannot consider new evidence on appeal. Appellant can submit the new evidence to the Office and request reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2)(1999); *see* 20 C.F.R. § 501.2(c).

The January 17, 2001 and August 17, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
March 14, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member