

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of VIVIAN J. BLAHA and U.S. POSTAL SERVICE,  
JULIUS MELCHER STATION, Houston, TX

*Docket No. 02-800; Submitted on the Record;  
Issued November 22, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation effective November 30, 1998.

Appellant's claim filed on November 18, 1995 was accepted for right shoulder impingement and sacroiliac strain. Appellant, a mail carrier, stopped work and did not return. Following extensive treatment and referral to a rehabilitation nurse, the Office sent appellant to Dr. Robert L. Brownhill, a Board-certified orthopedic surgeon, for a second opinion. Based on his May 12, 1997 report, the employing establishment offered appellant a permanent limited-duty clerk position, which she declined on July 25, 1997.

On September 10, 1997 the Office informed appellant that the position was suitable for her physical capabilities and provided her 30 days to accept the job or submit her reasons for refusing. The Office also sent Dr. Brownhill's report to appellant's physicians, Dr. Anjali Jain, Board-certified in physical medicine and rehabilitation, and Dr. Patricia D. Salvato, Board-certified in internal medicine.

Dr. Salvato stated in an October 2, 1997 report that appellant was receiving epidural injections for her sacroiliac problem and was unable to return to any substantial gainful employment. She added that appellant had back problems, chronic fatigue syndrome diagnosed in April 1994, hearing loss, cataracts and frequent bronchitis. Dr. Jain agreed that appellant was not fit for any work, adding that she was still being treated for pain in her neck and shoulder.

The Office found a conflict in the medical opinion evidence and referred appellant to Dr. Walter R. Sassard, a Board-certified orthopedic surgeon, for an independent medical

evaluation.<sup>1</sup> Based on his December 9, 1997 and April 20, 1998 reports, the Office informed appellant by letter dated August 20, 1998 that the limited-duty position offered by the employing establishment had been found to be suitable and that she had 30 days to accept the position or explain her reasons for refusing it. On September 21, 1998 the Office stated that appellant's reason for refusing the position was unacceptable and that she had 15 days to return to work.

In an October 9, 1998 letter, the Office asked Dr. Sassard to answer specific questions regarding appellant's physical condition and the etiology of her problems. Based on his response, the Office issued a notice of proposed termination of compensation on October 26, 1998.<sup>2</sup> On November 30, 1998 the Office terminated appellant's compensation on the grounds that her accepted work injuries had resolved.

Appellant requested reconsideration, and the Office denied modification of its termination decision on February 4, 1999. Appellant again requested reconsideration and submitted an April 8, 1999 report from Dr. S. Ali Mohamed, Board-certified in internal medicine, a November 29, 1999 report from Dr. Salvato, and a May 4, 1999 report from Dr. Suzanne E. Page, Board-certified in physical medicine and rehabilitation, as well as a letter detailing her disagreement with Dr. Sassard's conclusions.

The Office referred this evidence to its medical adviser who stated in a February 3, 2000 report that the Office should develop a clearly defined and thorough statement of accepted facts and refer appellant and the record to a Board-certified physician, preferably in physical medicine and rehabilitation, to resolve a conflict of medical opinion between Dr. Sassard and appellant's physicians, Drs. Mohamed and Page.

On February 9, 2000 the Office referred appellant to Dr. Larry L. Likover, a Board-certified orthopedic surgeon. Based on his February 24 and March 15, 2000 reports, the Office denied appellant's request for modification of its prior decision terminating compensation.

On March 21, 2001 appellant again requested reconsideration and submitted a March 15, 2001 report from Dr. Page, arguing that her previous report was completely ignored. Appellant also argued that her complaints about Dr. Likover's examination were never addressed. On January 3, 2002 the Office again denied modification of its prior decision.

The Board finds that the Office met its burden of proof in terminating appellant's compensation.

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>3</sup> Having determined that an employee has a disability

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<sup>1</sup> 5 U.S.C. § 8123(a) states in pertinent part: "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."

<sup>2</sup> Appellant responded to the proposed termination but the documents she submitted were stamped as received by the Office on December 2, 1998 and were thus not considered in the November 30, 1998 decision.

<sup>3</sup> *Betty Regan*, 49 ECAB 496, 501 (1998).

causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.<sup>4</sup>

In situations where opposing medical opinions on an issue are of virtually equal evidentiary weight and rationale, the case shall be referred for an impartial medical examination to resolve the conflict in medical opinion.<sup>5</sup> The opinion of the specialist properly chosen to resolve the conflict must be given special weight if it is sufficiently well rationalized and based on a proper factual background.<sup>6</sup>

In this case, the Office properly found a conflict in the medical opinion evidence between Dr. Brownhill, the Office's referral physician who found appellant capable of sedentary work, and Drs. Jain and Salvato, who concluded that appellant could not engage in gainful employment. Dr. Sassard stated in his December 9, 1997 report that he did not see "any objective evidence that the accepted work-related disability [was] currently active and disabling" and concluded in his October 18, 1998 report that "the effects of the right shoulder impingement syndrome and sacroiliac strain had resolved." He noted that appellant's manifestations of disability during his physical examination were primarily subjective. He reviewed the diagnostic testing in September 1996 and March 1997 and noted mild degenerative changes in the cervical spine and some mild narrowing of disc spaces in the lumbar spine but no evidence of any neural compromise.

Dr. Sassard reviewed a statement of accepted facts and a history of appellant's treatment for her right shoulder impingement and sacroiliac strain. He examined appellant thoroughly, discussed the diagnostic testing, explained his clinical findings, and provided medical rationale for his conclusion that appellant's work-related injuries were no longer disabling. The Board finds that Dr. Sassard's opinion is sufficiently well rationalized to be accorded special weight and establishes that appellant's accepted work injuries had resolved as of November 30, 1998.<sup>7</sup>

The Board further finds that the case must be remanded because of an unresolved conflict in the medical opinion evidence.

While Dr. Sassard resolved the conflict over the accepted work injuries, he did not comment on any of the conditions later mentioned by appellant's physicians, Drs. Mohamed, Salvato and Page, as work related in their reports submitted after the November 30, 1998 decision. Dr. Mohamed explained in an April 8, 1999 report the mechanics of appellant's various diagnosed conditions—myofascial pain syndrome; internal derangement of the knees, right shoulder and right hip; cervical and lumbar radiculopathy; and others—and why he

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<sup>4</sup> *Raymond C. Beyer*, 50 ECAB 164, 168 (1998).

<sup>5</sup> *Richard L. Rhodes*, 50 ECAB 259, 263 (1999).

<sup>6</sup> *Sherry A. Hunt*, 49 ECAB 467, 471 (1998).

<sup>7</sup> See *Jimmie H. Duckett*, 52 ECAB \_\_\_\_ (Docket No. 99-1858, issued April 6, 2001) (the opinion that appellant's back condition was due to the natural progression of his spondylitis was sufficiently rationalized to establish that his work-related back condition had resolved and to meet the Office's burden of proof in terminating compensation).

believed these were related to appellant's work as a mail carrier. He concluded that appellant's work-related injuries had not resolved. Dr. Salvato agreed in a November 29, 1999 report and explained her rationale for concluding that appellant's conditions were caused by her duties carrying the mail for 20 years.

In her May 4, 1999 report, Dr. Page reviewed appellant's work and medical histories, discussed her present complaints and conducted a physical examination. Dr. Page provided a detailed rationale supporting her opinion that all the diagnosed conditions were related to appellant's work as a mail carrier.

The Office medical adviser found this evidence sufficient to create a conflict of medical opinion with Dr. Sassard, and the Office referred appellant to Dr. Likover to resolve the conflict. However, the Board finds that his report is insufficiently rationalized to establish that appellant had no work-related physical conditions. First, Dr. Likover is not Board certified in the specialty suggested by the Office medical adviser, physical medicine and rehabilitation. While this recommendation is not binding on the Office, appellant's physical problems, some of which were preexisting, require more than orthopedic expertise.

Second, Dr. Likover's report includes several statements personally directed at appellant, which are inappropriate in an independent medical evaluation.<sup>8</sup> Third, Dr. Likover stated, without further explanation, that he found no evidence that appellant's hip or knee conditions or her chronic fatigue syndrome were related to her carrier duties. Finally, he failed to address specifically whether appellant's other diagnosed conditions were work related, stating only that her subjective complaints of pain were not consistent with a known disease process and were not verified by examination or diagnostic testing. He added that appellant exhibited significant functional overlay.

Thus, the Board finds that the opinion of Dr. Likover is insufficient to resolve the issue of whether appellant's diagnosed conditions were causally related to work factors. Therefore, a conflict of medical opinion remains between appellant's physicians, who have related appellant's diagnosed conditions to work factors, and Dr. Likover who found no evidence that her hip, knee, or other physical problems were work related.

The January 3, 2002 decision of the Office of Workers' Compensation Programs is affirmed in part, set aside in part and the case is remanded for further proceedings consistent with this opinion.<sup>9</sup>

Dated, Washington, DC

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<sup>8</sup> Dr. Likover noted that appellant seemed "to feel her opinion is more important than what physicians feel," that appellant appeared "rather hostile," and that her "alleged injuries" occurred "apparently while working at the post office."

<sup>9</sup> The Office medical adviser stated on February 3, 1999 that the record contained insufficient medical evidence to establish a consequential causal relationship between appellant's diagnosed knee condition and the accepted work injuries. The Board notes that subsequent medical reports indicated that appellant's other diagnosed conditions were related to her work duties as a mail carrier.

November 22, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member