



lower back, head, legs, feet and arms. On February 22, 2002 the Office accepted the claim for contusions of the scalp and neck, shoulder and upper arm mild bilateral shoulder impingement, and a thoracic-lumbar strain.<sup>1</sup> Following the injury, appellant continued to work with restrictions, missing work intermittently for medical treatment, until she stopped working on March 6, 2002.<sup>2</sup> On February 19, 2002 appellant began treatment with Dr. Dennis Giannini, a Board-certified specialist in physical medicine and rehabilitation. In a May 31, 2002 report, Dr. Giannini released appellant to return to work with physical restrictions as of June 1, 2002.<sup>3</sup> On June 1, 2002 appellant returned to work.<sup>4</sup>

The Office referred appellant for a second opinion examination, together with a statement of accepted facts, a set of questions and the medical record, to Dr. Norman Pollak, a Board-certified orthopedic surgeon. In a June 5, 2002 report, Dr. Pollak provided a history of injury and treatment and noted subjective complaints of pain on physical examination. The physician noted that an MRI scan revealed a herniated disc at L4-5; however, he explained that this was a preexisting condition and there were no clinical findings to support appellant's symptoms. Dr. Pollak opined that, based upon a lack of objective findings, appellant had recovered from her work injuries and did not require any further work restrictions.

On October 27, 2002 appellant filed a Form CA-7 for disability beginning on October 27, through November 10, 2002. Dr. Giannini continued to submit periodic reports. In his report dated October 29, 2002 he essentially repeated his prior diagnoses, and noted that he was concerned with appellant's increased pain and increased radicular signs on the physical examination and ordered a bilateral upper extremity and related paraspinal electromyogram (EMG) with bilateral median ulnar median and nerve conduction tests and and a lower dermatomal somatosensory evoked potentials (SEP), and took appellant off work for at least two months. On November 7, 2002 Dr. Giannini released appellant to return to limited duty on November 11, 2002. In a December 9, 2002 disability certificate, he indicated that appellant could handle six hours of casing mail and advised that she was off work from October 26 to November 10, 2002.

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<sup>1</sup> The record reflects that appellant had preexisting conditions of lumbosacral strain, L4-5 bulging disc with central canal stenosis and early degenerative changes at L4-5 and L5-S1, degenerative disc disease at L2-3 and bilateral wrist flexor tendinitis.

<sup>2</sup> On January 30, 2002 appellant accepted a limited-duty position of casing mail within her restrictions. The restrictions included: no lifting, pushing or pulling over 5 to 10 pounds; no frequent or continuous bending, stooping, reaching, squatting, kneeling, walking or standing.

<sup>3</sup> A March 11, 2002 electromyogram (EMG) read by Dr. Giannini, indicated that appellant had a normal right lower extremity and related paraspinal EMG consistent with left L5 radiculitis. A March 17, 2002 magnetic resonance imaging (MRI) scan of the lumbosacral spine, read by Dr. Harvey I. Wilner, a Board-certified radiologist, revealed a compressive disc herniation at L4-5, central disc herniation at L2-3 and L5-S1. An April 22, 2002 EMG read by Dr. Giannini indicates that appellant had a normal left upper extremity and right C7 radiculitis.

<sup>4</sup> The restrictions included no lifting greater than 10 pounds, no repetitive bending, stooping, or twisting, sitting and standing as needed, no repetitive or prolonged over the chest level work or cervical spine extension and no repetitive or forceful pulling or pushing. He further opined that appellant's condition was permanent and she would never be able to return to unrestricted work. The record reflects that appellant accepted a limited-duty position on June 3, 2003.

In a December 19, 2002 report, Dr. Giannini opined that the force of the work injury of January 26, 2002 was sufficient to result in multiple conditions and aggravated appellant's preexisting degenerative disc disease. Dr. Giannini further related that he had treated appellant for low back and wrist problems in 2001 and she had not complained of neck and shoulder pain at that time. He attributed appellant's conditions to the work injury of January 26, 2002. Dr. Giannini indicated that x-rays taken on October 29, 2002 when compared to those on February 19, 2002 revealed a significant worsening of appellant's degenerative disc disease, which he related to the work injury of January 26, 2002.

By letter dated December 19, 2002, the Office advised appellant that a conflict in medical opinion had been created as to whether she had disabling residuals due to her work injury of January 26, 2002. The Office deferred appellant's claim for continuing compensation beginning October 27, 2002 pending further development of appellant's work-related residuals and level of disability.

A December 30, 2002 MRI scan, read by Dr. Wilner, showed significant compression and disc herniation at C3-4 and some disc herniation at C5-6 associated with degeneration.

The Office referred appellant, the case record and a statement of accepted facts, to Dr. Charles Xeller, a Board-certified orthopedic surgeon for an independent medical examination on January 23, 2003.

In a January 23, 2003 report, Dr. Xeller provided a history of injury and treatment. He noted that physical examination showed no acute distress or spasm in the neck. He determined that appellant had flexion of 0 to 20 degrees and 0 to 50 degrees, which equated to 30 degrees of flexion and only 10 degrees of extension. Rotation was 40 degrees to the right and left and side bending was 10 to 30 on the right and left. He noted that all movements caused complaints of severe pain noting pain with motion of the shoulders over 90 degrees, but normal scapular and glenohumeral motion, with negative impingement testing. Appellant had low back pain at the midline, paraspinals and with any rotational movements and had full range of motion of the hip and knees. The physician advised that subjective complaints of pain were noted with pressure applied to appellant's head. He reviewed x-rays of the lumbar spine, which revealed slight degenerative changes and an MRI scan of the cervical spine which demonstrated multiple level degenerative changes. He diagnosed cervical and low back contusions which had resolved. Dr. Xeller recommended that appellant work with physical restrictions to include no lifting over 20 pounds due to her degenerative changes. He related that the injury sustained on January 26, 2002 was essentially contusions and noted that, as appellant had arthritic degeneration, his restrictions were related to the degenerative conditions.

By letter dated April 4, 2003, the Office requested clarification from Dr. Xeller regarding whether appellant had any residuals of the accepted conditions and whether the work injury of January 26, 2002 aggravated her preexisting degenerative conditions. The Office requested clarification as to whether the recommendations for work restrictions were based upon appellant's work injury or solely upon her preexisting degenerative spine conditions.

By letter dated April 15, 2003, the Office also referred appellant to Dr. Mark Silverman, a Board-certified neurologist and second opinion physician, to determine whether she had disabling residuals of her work-related scalp injury.

In a supplemental report dated April 17, 2003, Dr. Xeller indicated the accepted muscle contusions and strains had resolved. He noted the absence of muscle spasm, trigger points and clinical findings to support the diagnosis of radiculopathy and advised that the MRI scan demonstrated degenerative changes and no frank disc herniation. Dr. Xeller opined that the work injury of January 26, 2002 did not contribute to appellant's preexisting degenerative disc disease and that his recommendations for work restrictions were based solely on appellant's preexisting spinal contusion.

In a May 12, 2003 report, Dr. Silverman provided a history of injury and treatment and noted that appellant did not lose consciousness when injured at work. He advised that the neurological examination was negative and that her attention span, fund of knowledge, language skills and cranial nerve examination were normal. The physician indicated that the cerebellar examination showed that finger-to-nose rapid alternating movements and heel-to-shin were intact. Dr. Silverman indicated that the evidence supported a contusion to the scalp; but, there was no evidence of a cerebral concussion, closed head injury, head, scalp or brain condition. He opined that appellant was currently partially disabled, but should be near maximum medical improvement. He recommended no lifting over 25 pounds, no pushing or pulling over 25 pounds and no excessive bending or stooping and opined that the current cervical complaints were not related to the injury of January 26, 2002. He indicated that appellant could work an eight-hour day.

On May 28, 2003 the Office received multiple Forms CA-7 from appellant for intermittent periods of partial and total disability beginning October 27, 2002 and continuing.

By letter dated June 2, 2003, the Office advised appellant that the medical evidence was insufficient to support her claims of disability on or after October 27, 2002. The Office afforded appellant 30 days to submit additional evidence.

In a June 24, 2003 statement, appellant provided her reasons for her disability commencing October 27, 2002. She also provided a statement from Cheryl Good.

On July 28, 2003 the Office issued a notice of proposed termination of benefits, finding that the weight of the medical evidence of record established that appellant had no further disability for work or residuals requiring medical treatment causally related to the January 26, 2002 work-related injury.

Appellant disagreed with the notice of proposed termination and submitted additional evidence.

Dr. Giannini submitted reports in which he advised that appellant was tolerating her work restrictions and repeated his previous diagnoses, which included mild right carpal tunnel syndrome. He opined that appellant remained disabled from work. On July 28, 2003

Dr. Giannini noted appellant's subjective complaints of headache, neck pain radiating to the right upper extremity, shoulder and wrist and low back pain, radiating to the left lower extremity. He indicated that physical examination of the neck showed that flexion was achieved at 20 degrees, extension at 10 degrees, right rotation at 35 degrees and left rotation at 25 degrees and the spurling's maneuver was positive to the right. It was further noted that there was diminished pinprick in the bilateral C6 distributions and weakness in the biceps. The remainder of the examination was essentially normal. Dr. Giannini advised that appellant suffered from headache, migraine headache, cervical radiculitis at C6-7, herniated discs at C3-4, C5-6 and C6-7, degenerative disc disease of the cervical spine, greater occipital neuralgia, bilateral shoulder impingement, bilateral acromioclavicular arthritis, right mild carpal tunnel syndrome; left L5 lumbar radiculitis and herniated discs at L2-3, L4-5 and L5-S1. Dr. Giannini recommended further physical therapy for appellant's cervical spine condition and advised that she remain off work through August 30, 2003.

On August 19, 2003 Dr. Giannini again explained that the force of the impact that appellant sustained on January 26, 2002 was sufficient to result in contusions of the scalp, neck, shoulder, upper arm and multiple sites, mild bilateral shoulder impingement and thoracic lumbar strain. He advised that, "since the forces of this incident were sufficient to produce the above accepted conditions, they were certainly more than sufficient to significantly aggravate the preexisting degenerative disc disease and to become symptomatic." He advised that appellant had been treated for low back complaints from January 3 to December 11, 2001 but had not complained of any neck or shoulder pain and therefore appellant's neck and shoulder complaints were a "direct result of this work[-]related accident." Dr. Giannini referred to testing from March 28, 2002 which revealed C7 radiculitis, noting that, in October 2002, appellant began to experience a worsening of her neck and shoulder pain and hand numbness, evidenced by x-rays taken that month as compared to those taken post injury in February 2002. Dr. Giannini further advised that the EMG study of November 7, 2002 was significant for C6-7 radiculitis and the MRI scan of the cervical spine performed on December 30, 2002 revealed disc herniations at C3-4, C5-6 and C6-7 associated with appellant's degenerative disc disease. He reiterated that he took appellant off work from October 27 through November 11, 2002 and released her to part-time work, six hours per day, with restrictions.

Appellant subsequently filed several CA-7 forms covering intermittent periods of partial disability from October 27, 2002 to August 26, 2003.

By decision dated September 15, 2003, the Office denied appellant's claim for disability for the period on or after October 27, 2002. In a second decision dated September 15, 2003, the Office terminated appellant's compensation benefit effective that day. The Office found that the weight of the medical evidence established that her injury-related conditions had resolved.

### **LEGAL PRECEDENT -- ISSUE 1**

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that the employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden, the

employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.<sup>5</sup>

Causal relationship is a medical issue<sup>6</sup> and the medical evidence required to establish a causal relationship, generally, is rationalized medical evidence. This consists of 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.<sup>7</sup> The physician's opinion 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.<sup>8</sup>

In situations where there are opposing medical reports of virtually equal weight an rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background must be given special weight.<sup>9</sup>

### **ANALYSIS -- ISSUE 1**

In this case, appellant's physician, Dr. Giannini, Board-certified in physical medicine and rehabilitation, noted in his October 29, 2002 report that appellant had increased pain and radicular signs, ordered additional testing, and took appellant off work. On December 9, 2002, he indicated that appellant could handle six hours of casing mail and advised that she was off work from October 26 to November 10, 2002. However, he did not provide a rationalized opinion relating that there was a change in the nature and extent of the injury related condition or the nature and extent of the light-duty job requirements. In his December 19, 2002 report, Dr. Giannini opined that January 26, 2002 employment aggravated appellant's preexisting degenerative disc disease. However, he did not offer any opinion with respect to whether appellant's recurrence of disability commencing October 27, 2002 was related to appellant's accepted employment injuries such that there was a change in the nature and extent of the injury-related condition or the light-duty requirements of her position. Dr. Giannini further related that he had treated appellant for low back and wrist problems in 2001 and she had not complained of neck and shoulder pain at that time. 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 but symptomatic after it is insufficient, without supporting rationale, to establish causal relationship.<sup>10</sup> Although he attributed appellant's conditions to the work injury of January 26, 2002 and noted that x-rays taken on October 29, 2002 when compared to those on

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<sup>5</sup> *Richard E. Konnen*, 47 ECAB 388 (1996); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

<sup>6</sup> *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

<sup>7</sup> *Duane B. Harris*, 49 ECAB 170, 173 (1997).

<sup>8</sup> *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

<sup>9</sup> *Manuel Gill*, 52 ECAB 282 (2001).

<sup>10</sup> *John F. Glynn*, 53 ECAB \_\_\_\_ (Docket No. 01-1184, issued June 4, 2002).

February 19, 2002 revealed a significant worsening of appellant's degenerative disc disease, he did not provide an explanation revealing how he attributed that the accepted injuries were responsible for appellant's recurrence as opposed to her numerous preexisting degenerative conditions, as shown on the December 30, 2002 MRI scan. Further, he subsequently submitted reports in which he advised that appellant was tolerating her work restrictions and then went on to say that appellant remained disabled. On July 28, 2003 Dr. Giannini provided a diagnosis which contained only one accepted condition, bilateral shoulder impingement, and did not offer any opinion relating that appellant could not perform her light duty such that there was a change in the injury-related condition or the light-duty requirements commencing on October 27, 2002. On August 19, 2003 Dr. Giannini reiterated that appellant did not have any neck or shoulder pain previously and that they were therefore "direct result of this work[-]related accident."<sup>11</sup> He also referred to testing which revealed worsening of appellant's neck, shoulder and hands in October of 2002, and an MRI scan of the cervical spine performed on December 30, 2002 which revealed disc herniations at C3-4, C5-6 and C6-7 associated with appellant's degenerative disc disease. He reiterated that he took appellant off work from October 27 through November 11, 2002 and released her to part-time work, six hours per day, with restrictions. However, he did not explain that appellant's injury-related condition had changed or that her light-duty requirements had changed such that she could not perform her light duty.

While appellant submitted a number of reports from Dr. Giannini in which he opined that appellant remained disabled from work. He did not offer a rationalized opinion to support a recurrence of disability on or after October 27, 2002 due to her accepted employment injury.

As appellant has failed to establish either a change in the nature and extent of her injury-related condition or a change in the nature and extent of her light-duty job requirements, she has failed to meet her burden of proof in establishing a recurrence of total disability and the Office properly denied her claim.<sup>12</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>13</sup> Having determined that an employee has a disability 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>14</sup> The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>15</sup> To terminate authorization for medical

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<sup>11</sup> *Id.*

<sup>12</sup> Although the record contains subsequent reports from Drs. Xeller, and Silverman, they did not specifically address the October 27, 2002 period.

<sup>13</sup> *Curtis Hall*, 45 ECAB 316 (1994).

<sup>14</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>15</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>16</sup>

If there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination.<sup>17</sup> In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>18</sup>

### **ANALYSIS -- ISSUE 2**

The Office determined that a conflict of medical opinion existed between Dr. Giannini, appellant's physician Board-certified in physical medicine and rehabilitation and Dr. Pollack, a Board-certified orthopedic surgeon and Office referral physician. The Office properly referred appellant to an impartial medical examiner, Dr. Xeller, a Board-certified orthopedic surgeon.

The Board finds that the Office properly relied on the Dr. Xeller's reports to terminate appellant's compensation. He determined that there were no objective findings to correspond with appellant's subjective complaints and that there was no evidence of any continuing work-related disability or residuals of the accepted conditions. Dr. Xeller conducted a physical examination, reviewed the record and diagnostic testing and provided a rationalized opinion which explained that the injury appellant sustained consisted of contusions and sprains which had resolved. He attributed appellant's ongoing symptoms to her degenerative problems which he determined was not aggravated by the accepted injury. Dr. Xeller explained his findings and provided a rationalized opinion based upon a proper factual background and the Office properly accorded determinative weight to the impartial medical examiner's January 23 and April 17, 2003 findings.

The Board also finds that the weight of medical evidence with respect to the work-related condition of contusion to the scalp is represented by Dr. Silverman, a Board-certified neurologist, who noted his review of the records, which failed to reveal any objective findings of any head or scalp injury and opined that appellant did not suffer from any brain or head condition, secondary to her work injury of January 26, 2002.

Dr. Giannini provided reports which reiterated his previously stated findings and conclusions regarding appellant's condition. Dr. Giannini was on one side of the conflict, which was resolved by the impartial medical specialist and his additional reports are not sufficient to overcome the weight accorded to Dr. Xeller's opinion.<sup>19</sup>

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<sup>16</sup> *Calvin S. Mays*, 39 ECAB 993 (1988).

<sup>17</sup> *Manuel Gill*, *supra* note 9.

<sup>18</sup> *Id.*

<sup>19</sup> *Alice J. Tysinger*, 51 ECAB 638 (2000).



**CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that she had recurrences of disability on or after October 27, 2002 causally related to the January 26, 2002 employment injury. The Board also finds that the Office met its burden of proof to terminate appellant's compensation effective September 15, 2003.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 15, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: October 7, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member