

by Dr. Ranga C. Krishna, a Board-certified neurologist, and Dr. Seymour Goldstein, a chiropractor, stopped working on the date of injury.

In a report dated July 14, 2003, Dr. Krishna provided several diagnoses that he opined were related to the June 1, 2003 injury, namely: post-traumatic cervical strain; post-traumatic lumbosacral strain; possible superimposed lumbar disc, resulting in lumbosacral radiculopathy and neuropathic pain syndrome; possible superimposed cervical disc, resulting in a cervical radiculopathy and neuropathic pain syndrome; and right wrist hyperextension, resulting in a carpal tunnel syndrome. In a January 8, 2004 work capacity evaluation, Dr. Krishna reported that appellant experienced lumbosacral radiculopathy, causing persistent pain. He further opined that he was unable to work at that time.

The Office referred appellant to Dr. Donald H. Frank, a Board-certified neurological surgeon, for a second opinion examination. In an undated report of his March 17, 2004 examination of appellant, Dr. Frank indicated that appellant continued to complain of persistent low back pain. He opined that, if the history as reported by appellant was accurate, then there was causality between the June 1, 2003 injury and his symptoms and that he was temporarily totally disabled. However, he recommended an updated magnetic resonance imaging (MRI) scan, x-rays of the lumbar spine and electromyograms (EMG) of the lumbar spine and lower extremities to determine if there was diagnostic evidence for his complaints of pain. Dr. Frank submitted a work capacity evaluation reflecting that appellant had reached maximum medical improvement and was capable of performing his usual job. In a supplemental report dated July 9, 2004, he reviewed appellant's test results. A June 1, 2004 report of an MRI scan of the lumbar spine showed a broad-based disc bulge at L4-5; an April 26, 2004 x-ray revealed dextroscoliosis of the lumbar spine and no significant change from June 2, 2003; and an April 24, 2004 report of electrodiagnostic testing was normal. Dr. Frank concluded that, in view of the additional medical reports, appellant no longer had any disability and could return to full activities.

In a June 12, 2004 report, Dr. Andrew M.G. Davy, a Board-certified anesthesiologist, referenced an EMG and nerve conduction study of appellant's lumbosacral spine performed on August 4, 2003. He noted right-sided L5-S1 lumbosacral radiculopathy. He also stated that an August 8, 2003 MRI scan of the lumbosacral spine showed straightening of normal curvature and posterior bulging discs at L4-5 and L5-S1. Dr. Davy provided diagnoses of low back pain secondary to post-traumatic disc pathology, lumbar radiculopathy, lumbar herniated disc disease and disc bulges, and multiple areas of tense myofascial trigger points. In a follow-up report dated July 21, 2004, Dr. Davy opined that appellant was a candidate for discectomy at L4-5 and L5-S1.

The Office referred appellant, together with a statement of accepted facts and the case file, to Dr. Chandra Sharma, a Board-certified neurologist for an impartial medical examination in order to resolve the conflict between appellant's physicians, Dr. Krishna and Dr. Davy, and the second opinion physician, Dr. Frank. Dr. Sharma was asked to determine whether appellant had any residual disability or medical condition causally related to his work-related injury.

In a report dated August 24, 2004, Dr. Sharma provided a history of appellant's condition, findings on examination and the results of x-rays, EMGs and other diagnostic tests. He diagnosed subjective cervical and lumbar pain. Dr. Sharma reported that results of appellant's neurological examination were essentially normal and opined that he could perform his regular work without physical restrictions. Pursuant to his examination, Dr. Sharma stated that appellant had a normal gait, with no limp or ataxia; that he could stand on his heels and toes and could walk in tandem; that he was able to squat; that his arms and legs were symmetrical; that his posture was normal; that the range of motion of his spine was normal during bending and transfer during activities; and that standing upright, he could bend forward and bring his hands down to mid-thigh level. In a supine position, leg elevation was 10 degrees bilaterally and appellant was able to place his right foot on his left knee and his left foot on his right knee. The movements of his neck were normal in all directions. He opined that appellant had fully recovered from and had no neurological problems that were causally related to his June 1, 2003 work-related injury. Dr. Sharma opined that he was able to return to full duty without any limitations.

By letter dated September 20, 2004, the Office advised appellant of its proposed termination of his compensation and medical benefits on the grounds that the weight of the medical evidence, as represented by the report of Dr. Sharma, the impartial medical specialist, established that he had no residuals from his June 1, 2003 accepted injury. The Office advised appellant that he had 30 days to submit additional evidence or argument.

Appellant submitted numerous documents in response to the Office's notice, including letters of medical necessity from Dr. Davy dated September 12, 2004 and from Dr. Eric M. Turk, a chiropractor, dated September 28, 2004; requests for authorization for treatment; a copy of Dr. Davy's July 21, 2004 report; prescriptions for physical therapy signed by Dr. Mark Kostin, a Board-certified internist, dated June 27, August 5 and September 10, 2004; physical therapy notes signed by Dr. Kostin; an EMG report dated August 4, 2003; an MRI report dated August 8, 2003; and a recovering employee's duty assignment returning appellant to full-duty status in a new job. Appellant's representative also submitted an October 8, 2004 letter stating that appellant was medically unable to accept the employing establishment's offer of employment.

By decision dated October 22, 2004, the Office terminated appellant's compensation and medical benefits.

In a report dated October 10, 2004, Dr. Krishna reiterated his opinion that appellant was totally disabled. Referring to the August 8, 2003 MRI scan, Dr. Krishna provided diagnoses of "post-traumatic cervical strain injury; post-traumatic lumbosacral strain injury; superimposed lumbar bulging disc as per MRI study; lumbosacral radiculopathy; neuropathic pain syndrome; possible superimposed cervical disc resulting in a cervical radiculopathy and a neuropathic pain syndrome; and right wrist hyperextension injury resulting in a carpal tunnel syndrome."

In an August 24, 2004 chiropractic reevaluation, Dr. Turk provided diagnoses of thoracic segmental joint dysfunction, lumbar segmental joint dysfunction, right hip pain, chronic lumbar sprain/strain, lumbar radiculopathy, and myofasciitis. He opined that appellant was permanently and totally disabled. In a November 14, 2004 report, Dr. Davy repeated the history of injury and

treatment and stated that appellant remained temporarily totally disabled. He indicated that he had last examined appellant on September 12, 2004.

On February 1, 2005 appellant, by his representative, requested reconsideration of the October 22, 2004 decision, alleging that the Office had not met its obligation to develop the medical evidence; that the chiropractor's reports were improperly excluded; and that the referral to the second opinion and referee examinations exceeded the bounds of reasonableness. He contended that the second opinion report was deficient, inconclusive, contradictory and lacked medical rationale and that the referee report lacked probative value and did not represent the weight of the medical evidence. It was noted that the reports of Dr. Krishna, dated October 10, 2004, and Dr. Davy, dated November 14, 2004, support appellant's work-related disability.

By decision dated May 4, 2005, the Office denied modification of its October 22, 2004 decision, finding that the weight of the medical evidence established that appellant no longer had a disability or residuals from the accepted June 1, 2003 injury.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.¹ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.²

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that require further medical treatment.³

Section 8123(a) of the Federal Employees' Compensation Act provides, in pertinent part, "If there is 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."⁴ Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.⁵

¹ *Mohamed Yunis*, 42 ECAB 325 (1991).

² *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

³ *See LaDonna M. Andrews*, 55 ECAB ____ (Docket No. 03-1573, issued January 30, 2004); *Wiley Richey*, 49 ECAB 166 (1997); *Furman G. Peake*, 41 ECAB 361 (1990).

⁴ 5 U.S.C. § 8123(a); *see also Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

⁵ *See Roger Dingess*, 47 ECAB 123 (1995); *Glenn C. Chasteen*, 42 ECAB 493 (1991).

ANALYSIS

The Board finds that the Office met its burden of proving that appellant's accepted condition had resolved and that related residuals had ceased as of October 22, 2004.

Dr. Krishna treated appellant for his accepted work-related condition of cervical and lumbosacral strain and several additional diagnoses, including post-traumatic cervical strain; post-traumatic lumbosacral strain; possible superimposed lumbar disc, resulting in lumbosacral radiculopathy and neuropathic pain syndrome; possible superimposed cervical disc, resulting in a cervical radiculopathy and neuropathic pain syndrome; and right wrist hyperextension, resulting in a carpal tunnel syndrome. On January 8, 2004 he concluded that appellant was unable to work as of that date. Dr. Davy provided additional diagnoses as well, including right-sided L5-S1 lumbosacral radiculopathy and posterior bulging discs, and opined that appellant was a candidate for percutaneous discectomy at L4-5 and L5-S1. On the other hand, following a March 24, 2004 second opinion examination and a review of an April 24, 2004 MRI scan, Dr. Frank concluded that appellant no longer had any disability or residuals due to the accepted injury.

Due to the conflict in medical opinion, the case was properly referred to Dr. Sharma, an impartial medical specialist. His opinion, which is based on a proper factual and medical history, is well rationalized and supports the determination that appellant's accepted conditions of cervical and lumbosacral strain had ceased by October 22, 2004, the date the Office terminated his benefits. Dr. Sharma accurately summarized the relevant medical evidence, provided findings on examination and reached conclusions regarding appellant's condition which comported with his findings. He reported that results of appellant's neurological examination were essentially normal and opined that he could perform his regular work without physical restrictions. Pursuant to his examination, Dr. Sharma stated that appellant had a normal gait, with no limp or ataxia; that he could stand on his heels and toes and could walk in tandem; that he was able to squat; that his arms and legs were symmetrical; that his posture was normal; that the range of motion of his spine was normal during bending and transfer during activities; that standing upright, he could bend forward and bring his hands down to mid-thigh level; that in a supine position, leg elevation was ten degrees bilaterally; that he was able to place his right foot on his left knee and his left foot on his right knee; and that movements of his neck were normal in all directions. He opined that appellant had fully recovered from and had no neurological problems that were causally related to his June 1, 2003 work-related injury and that he was able to return to full-duty without any limitations.

As Dr. Sharma provided a detailed and well-rationalized report based on a proper factual background, his opinion is entitled to the special weight accorded an impartial medical examiner.⁶ The remaining evidence of record is insufficient to outweigh that special weight. The letters of medical necessity, requests for authorization of treatment, and physical therapy notes submitted by appellant lack probative value in that they do not address the causal relationship between appellant's current alleged condition and his work-related injury.⁷ Dr. Turk's August 24, 2004 chiropractic reevaluation is not probative medical evidence, as a

⁶ See *Roger Dingess*, *supra* note 5.

⁷ *Mary A. Ceglia*, 56 ECAB ____ (Docket No. 04-113, issued July 22, 2004).

chiropractor is considered a physician for purposes of the Act only where he diagnoses subluxation by x-ray.⁸ There is no indication in the record that an x-ray was performed on appellant that support a diagnosis of spinal subluxation.

Dr. Davy's November 14, 2004 report and Dr. Krishna's October 10, 2004 report lack probative value for several reasons. First, they are cumulative in nature and provide no new evidence, or basis to contradict Dr. Sharma's report. The Board has held that an additional report from appellant's physician that essentially repeats earlier findings and conclusions is insufficient to overcome the weight accorded to an impartial medical specialist.⁹ Dr. Davy and Dr. Krishna were on one side of the conflict in medical opinion that gave rise to the impartial medical examination. Therefore, their reports are insufficient to overcome or to create a conflict with the well-rationalized medical opinion of Dr. Sharma.¹⁰ Although Dr. Davy opined on November 14, 2004 that appellant was totally disabled, he had not examined appellant since September 12, 2004, two months earlier. The probative value of both reports is thus diminished by the fact that they do not provide a current statement of appellant's condition. Dr. Krishna's report reflects that he failed to review the reports of appellant's June 1, 2004 MRI scan, April 26, 2004 x-ray or April 24, 2004 electrodiagnostic testing and that he based his diagnosis and opinion on the report of appellant's August 8, 2003 MRI scan. Because his conclusions were founded upon an incomplete medical record, the probative value of his opinion is reduced. Moreover, the only conditions accepted by the Office were cervical and lumbosacral strain. Neither Dr. Davy nor Dr. Krishna explained how appellant's newly diagnosed conditions are causally related to his June 1, 2003 employment-related injury.¹¹

The Board finds that the weight of the medical evidence, which is contained in the report of the referee medical examiner, establishes that residuals from appellant's accepted condition have ceased. The Board further finds that the Office has met its burden of showing that appellant's employment-related condition has resolved.

The Board notes that in the May 5, 2005 decision on appellant's request for reconsideration, the Office concluded that modification of its October 22, 2004 decision was not warranted in that the evidence submitted by appellant did not demonstrate "clear evidence of error" on the part of the Office. The Board notes that the "clear evidence of error standard" is reserved for untimely requests for reconsideration, namely those requests made more than one

⁸ 5 U.S.C. § 8101(2). Section 8101(2) of the Act provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. The term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the secretary." See *Merton J. Sills*, 39 ECAB 572, 575 (1988).

⁹ *Michael Hughes*, 52 ECAB 387 (2001).

¹⁰ *Roger G. Payne*, 55 ECAB ____ (Docket No. 03-1719, issued May 7, 2004).

¹¹ See *Donald W. Long*, 41 ECAB 142 (1989) (appellant has the burden of establishing causal relationship where conditions were not accepted by the Office).

year after the last merit decision.¹² The reference to the clear evidence of error standard is harmless, however, as the memorandum accompanying the decision clearly denotes a review of the merits of the claim.

CONCLUSION

The Office met its burden of proof in terminating appellant's medical and wage-loss benefits effective October 22, 2004.

ORDER

IT IS HEREBY ORDERED THAT the May 4, 2005 and October 22, 2004 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: October 4, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

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

¹² The Office procedures state that the Office will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607, if the claimant's application for review shows "clear evidence of error" on the part of the Office. Section 10.607(b) provides: "[The Office] will consider an untimely application for reconsideration only if the application demonstrates clear evidence of error on the part of [it] in its most recent decision. The application must establish, on its face, that such decision was erroneous." 20 C.F.R. § 10.607(b).