

On February 6, 1990 appellant, then a 32-year-old letter carrier, filed a traumatic injury claim alleging that she injured her back and neck when she slammed on the brakes of her vehicle

to avoid hitting another vehicle. The vehicles did not impact.<sup>1</sup> The Office accepted that appellant sustained an employment-related cervical strain. Appellant did not stop work, but rather returned to various modified-duty assignments with varied restrictions in lifting, standing, keyboarding, pushing and pulling. On June 27, 1990 Dr. James E. McSweeney, a Board-certified orthopedic surgeon, declared appellant permanent and stationary. By decision dated February 13, 2003, the Office found that the modified mail processing clerk position, which appellant had been working since July 26, 2002, fairly and reasonably represented her wage-earning capacity and that she had no loss in earning capacity.<sup>2</sup>

To determine whether appellant continued to have residuals of her February 6, 1990 accepted condition, the Office referred appellant to Dr. Thomas R. Dorsey, a Board-certified orthopedic surgeon, for a second opinion. In a March 19, 2003 report, Dr. Dorsey noted the history of injury, his review of the medical records, and presented his examination findings, which were essentially normal for her back, neck, shoulders, extremities, nerves and reflexes as well as for the range of motion of the neck, shoulder and lower back. No muscle spasms were noted in the neck or low back and there was no evidence of abnormality of the thoracic spine, right shoulder or lumbar spine. Dr. Dorsey opined that there were no residuals from the February 6, 1990 cervical musculoligamentous sprain/strain and there was no evidence of aggravation. He explained that the known history of resolution of cervical musculoligamentous sprain/strain would be within 12 weeks and appellant had no evidence on examination of any residuals from her accepted injury of February 6, 1990.

On June 27, 2003 the Office sent a copy of Dr. Dorsey's March 19, 2003 report to Dr. Lindy O'Leary, Board-certified in occupational medicine and appellant's treating physician. In a July 8, 2003 report, Dr. O'Leary stated that she started treating appellant on January 8, 2003 based on her subjective complaints of diffuse myofascial pain involving her neck, back and shoulder girdle and advised that her physical examination was normal. She agreed with Dr. Dorsey's opinion except that appellant had diffuse myofascial pain and required future medical care for her work-related neck injury. Dr. O'Leary stated that she could not comment on the etiology, but assumed it was from appellant's motor vehicle accident as that was the history appellant provided. She further noted that appellant was treated fairly continuously from her work-related accident until December 2001 and that her chronic cervical strain was deemed stable prior to her evaluation. Dr. O'Leary continued to provide reports on appellant's status.

By letter dated November 14, 2003, the Office informed appellant that it proposed to terminate her compensation benefits on the grounds that she no longer had residuals of her accepted cervical strain of February 6, 1990.

Appellant disagreed with the proposed termination. In a January 27, 2004 statement, she asserted that Dr. Dorsey's examination was inadequate as the total time spent with the nurse and

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<sup>1</sup> Appellant was involved in three previous nonindustrial motor vehicle accidents, on February 25, March 4, 1988 and September 30, 1989, and sustained injuries to her cervical spine, shoulder and back.

<sup>2</sup> On November 13, 2006 appellant's application for disability retirement was approved by the Office of Personnel Management.

Dr. Dorsey was about 25 minutes, his range of motion examination was either very limited or nonexistent, and Dr. Dorsey did not ask her about pain.

Appellant also submitted: a June 5, 2000 medical report from Dr. Roger Freeman, a Board-certified orthopedic surgeon; a May 14, 2001 medical report from Dr. Bradford H. Stiles, a Board-certified family practitioner; a November 4, 2003 report from Dr. O'Leary along with referrals for physical therapy; a December 8, 2003 physical therapy initial plan of care; physical therapy notes from December 8, 2003 to January 28, 2004; and a December 9, 2003 magnetic resonance imaging (MRI) scan of the cervical spine.

In his June 5, 2000 report, Dr. Freeman indicated that, when appellant was last seen on November 5, 1990, she was permanent and stationary from the February 1990 injury with a condition of cervical strain and myofasciitis of the right periscapular tissues. He indicated that since her last visit, appellant has had tolerable continued symptoms with intermittent worsening and recently had an increase in her prior symptomatology of her cervical and thoracic spine areas when a chair she was sitting in broke. Dr. Freeman provided an impression of aggravation of cervical spine, myofasciitis of the right periscapular tissue and lumbar strain. He further opined that appellant had an exacerbation of her prior work injury which had caused temporary total disability. In his May 14, 2001 report, Dr. Stiles diagnosed stable chronic cervical strain, stable chronic periscapular and subscapularis strains, and overuse of serratus anterior and lumbar postural muscles secondary to increased therapeutic exercises. In her November 4, 2003 report, Dr. O'Leary diagnosed cervical strain with chronic periscapular pain and facet syndrome and lumbar strain with chronic myofascial pain.

By decision dated February 26, 2004, the Office terminated appellant's compensation effective the same date on the grounds that the medical evidence established that her condition had resolved.

On February 24, 2005 appellant requested reconsideration and submitted additional medical evidence. In a January 6, 2005 medical report, Dr. Bradley H. Chesler, a Board-certified physiatrist, noted reviewing the medical record and Dr. Dorsey's March 19, 2003 report. He opined that, while Dr. Dorsey found no evidence of shoulder pathology or abnormality in the lumbar spine, appellant still had residuals related to the February 6, 1990 motor vehicle accident as she has cervical pain with extension and limited cervical range of motion on extension and overhead reaching. Dr. Chesler also indicated that appellant's diagnosis should include cervical strain aggravated by the repetitive motions of lifting and carrying from her usual and customary job as a mail carrier for almost 26 years.

In a February 8, 2005 medical report, Dr. Kamshad Raiszadeh, a Board-certified orthopedic surgeon, noted the history of injury, appellant's medical treatment, her current complaints and her past medical history and reviewed the medical record. He set forth his examination findings and diagnosed chronic cervical thoracic sprain/strain and deconditioning with no evidence of radiculopathy. Utilizing the Office's statement of accepted facts dated February 13, 2003, Dr. Raiszadeh stated that appellant did not have any evidence of cervical radiculopathy or myelopathy and the MRI scan of her cervical spine did not reveal significant pathology or nerve root impingement. He advised that appellant was significantly deconditioned and her treatment should include muscle strengthening of the neck and stabilization of the trunk

musculature, a continued aerobic fitness regimen and weight loss. Given appellant's excessive weight, Dr. Raiszadeh opined that her chronic muscle strain and current disability were causally related to her work-related injury, in which she suffered a whiplash-type of injury. He also reviewed Dr. Dorsey's March 19, 2003 report and, while he generally agreed with Dr. Dorsey's statement that appellant's cervical strain should have resolved within 120 to 180 days, he advised that this was not applicable in appellant's case as she was significantly obese and became deconditioned after the injury, which resulted in a chronic pain-type syndrome. Dr. Raiszadeh advised that this was a clearly documented condition which can occur in a minority of patients with whiplash injury and, therefore, a blanket statement that her neck condition should have resolved within 120 to 180 days was fallacious. He opined that, while appellant's treatment had been excessive, she continued to be significantly deconditioned.

The Office found that a conflict in medical evidence was created between the opinions of Dr. Dorsey and Dr. Raiszadeh regarding whether appellant had any residuals from her accepted cervical strain. On September 9, 2005 the Office referred appellant, along with an amended statement of accepted facts dated August 10, 2005, a list of questions and the case record, to Dr. Stuart C. Marshall, a Board-certified orthopedic surgeon, for an impartial medical evaluation. In an October 10, 2005 report, Dr. Marshall reviewed the medical evidence of record, set forth his examination findings and diagnosed cervical strain and degenerative disc disease. He opined that appellant's multiple injuries from past motor vehicle accidents, the February 6, 1990 motor vehicle accident, her predisposition for cervical degenerative changes, excessive weight and poor conditioning all contribute to her current diagnostic condition of cervical strain of an intermittent nature. Dr. Marshall advised that appellant's current cervical strain was a temporary aggravation which had exacerbated her preexisting condition from her previous accidents and her degenerative changes in the cervical spine and was not related to her February 6, 1990 accident. He explained that the minor accident she had on February 6, 1990 had no findings and, according to Dr. McSweeney, had resolved completely by June 1990. Dr. Marshall also stated that the February 6, 1990 accident would not explain why she had MRI scan changes in the cervical spine area. He opined that appellant could work as a modified mail processing clerk and her restrictions were due to degenerative changes and preexisting conditions as well as developing problems unrelated to her February 6, 1990 injury. Dr. Marshall found that appellant may suffer from her 1990 work injury to a minor degree compared to her preexisting condition as well as developmental problem of degenerative changes.

The Office received additional medical reports from Dr. Chesler dated September 29 and October 31, 2005 and Dr. Raiszadeh dated October 4, 2005 and March 28, 2006.<sup>3</sup> In his September 29, 2005 report, Dr. Chesler opined that there appeared to be an unresolved conflict between Dr. Dorsey and Dr. Raiszadeh.

In his October 4, 2005 report, Dr. Raiszadeh reiterated his previous opinion that appellant had residuals and disability from her February 6, 1990 work injury which had become chronic because of her deconditioned state. In his March 28, 2006 report, Dr. Raiszadeh advised that he reviewed Dr. Marshall's October 10, 2005 report. He reiterated his opinion, as expressed in his

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<sup>3</sup> The Office additionally received medical reports regarding the continuation of appellant's work restrictions.

earlier reports, that appellant sustained a significant injury in 1990 and that this injury had resulted in treatment and residual permanent disability.

The Office additionally received appellant's May 3, 2006 statement, in which she disagreed with Dr. Marshall's October 10, 2005 report and pointed out certain discrepancies. In a July 12, 2006 letter, the Office requested that Dr. Marshall clarify his opinion regarding the cause of appellant's current condition. Specifically, the Office asked whether the February 6, 1990 accident caused only a temporary aggravation that ceased in June 1990 (as reported by Dr. McSweeney) or whether it contributed to her current diagnosis. The Office also inquired whether x-rays were taken on the date of the examination as noted by appellant and asked that Dr. Marshall provide medical rationale in resolving the conflict of medical opinion between Dr. Dorsey and Dr. Raiszadeh.

In an October 27, 2006 report, Dr. Marshall opined that appellant had a temporary aggravation or exacerbation of her cervical spine condition that resulted from her February 6, 1990 work injury. He stated that the motor vehicle accident did not generate enough force to cause any permanent damage and that appellant's long-term symptoms were due to previous automobile accidents and her osteoarthritis which was present in multiple levels of her spine. Dr. Marshall advised that appellant had adequate time and therapy of one year, in which she was able to regain her preinjury status. He noted that x-rays were taken on October 10, 2005 of the cervical spine, thoracic spine and lumbar spine, which indicated mild degenerative changes. Dr. Marshall additionally indicated the records did not support Dr. Raiszadeh's statement regarding appellant's deconditioning after the February 6, 1990 work accident as appellant was functioning on her own from 1991 through 2000 with no evidence of treatment or statements of worsening of her condition, whether physical or mental. Dr. Marshall opined that, "[i]n conclusion, to clarify the situation[,] it is my feeling that this patient incurred an injury on February 6, 1990 which was minor, and forces involved resolved within a year and does not contribute to permanent aggravation of her preexisting condition which consists of injuries to her cervical spine from motor vehicle accidents as well as primary osteoarthritis of her thoracic spine that m[a]y contribute to some of the cervical spine symptoms and findings."

By decision dated December 8, 2006, the Office reviewed the case on the merits and found that the weight of the medical evidence rested with Dr. Marshall's impartial examination that appellant's work-related cervical strain resolved in 1991, one year following her injury, and thus the decision to terminate her benefits was appropriate. The Office further found that appellant had no residuals from her work-related cervical strain.

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

Once the Office has accepted a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>4</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>5</sup> The Office's burden of proof in terminating compensation includes

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<sup>4</sup> *Bernadine P. Taylor*, 54 ECAB 342 (2003).

<sup>5</sup> *Id.*

the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>6</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.<sup>7</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.<sup>8</sup>

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

The Board finds that, as of the time of the February 26, 2004 termination decision, the weight of the medical evidence was represented by the thorough, well-rationalized opinion of Dr. Dorsey, who provided a second opinion evaluation. Dr. Dorsey provided a March 19, 2003 report which listed his findings on physical examination and concluded that appellant had no objective ongoing residuals related to the February 6, 1990 employment injury, a cervical strain. He further opined that there was no evidence of aggravation.

In reports dated July 8 and November 4, 2003, appellant's treating physician, Dr. O'Leary, opined that appellant had cervical strain with chronic periscapular pain and facet syndrome and lumbosacral strain with chronic myofascial pain which required future medical care. However, she did not provide any explanation or a rationalized opinion on how the current diagnoses were causally related to the February 6, 1990 cervical strain, which she noted was deemed stable at the time of evaluation. The Board has held that medical reports not containing rationale on causal relation are entitled to little probative value.<sup>9</sup> Thus, Dr. O'Leary's reports are insufficient to cause a conflict with Dr. Dorsey's opinion.

Dr. Freeman opined in his June 5, 2000 report that appellant suffered an exacerbation of her February 6, 1990 work injury when the chair she was sitting in broke. As Dr. Freeman did not attribute the exacerbation of appellant's cervical strain and myofasciitis of the right periscapular tissues to the accepted employment injury, but instead to a nonwork incident, falling out of a broken chair sometime in 2000, his opinion is of little probative value. The fact that a condition arises after an injury and was not present before an injury is not sufficient to support

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<sup>6</sup> *Gewin C. Hawkins*, 52 ECAB 242 (2001).

<sup>7</sup> *Roger G. Payne*, 55 ECAB 535 (2004).

<sup>8</sup> *Pamela K. Guesford*, 53 ECAB 726 (2002).

<sup>9</sup> *Jimmie H. Duckett*, 52 ECAB 332 (2001).

causal relationship.<sup>10</sup> Dr. Stiles' report and the December 9, 2003 MRI scan report do not address the issue of causal relationship and, thus, are of diminished probative value.<sup>11</sup> While appellant also submitted notes and reports signed by a physical therapist, these reports were not signed by individuals that qualify as physicians under the Act and, thus, they do not constitute probative medical evidence.<sup>12</sup>

Contrary to appellant's allegation that Dr. Dorsey's range of motion examination was either very limited or nonexistent and he did not ask her about pain, the record reflects that he found a normal range of motion for appellant's neck, shoulder and lower back and had mentioned that appellant's current complaints included pain in her right shoulder, neck and low back. Dr. Dorsey examined appellant, noted an essentially normal examination and found no basis on which to attribute any continuing symptoms or disability to the February 6, 1990 cervical strain.

Dr. Dorsey's March 19, 2003 report is based on an accurate factual background and provides sufficient medical rationale for his conclusion.<sup>13</sup> Thus, the Office met its burden of proof to terminate appellant's benefits as the weight of the medical evidence indicates that residuals of the employment-related condition had ceased effective February 26, 2004.

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

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to her to establish that she had disability causally related to her accepted injury.<sup>14</sup> To establish a causal relationship between the condition, as well as any attendant disability claimed, and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>15</sup> Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>16</sup> Rationalized medical evidence is medical

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<sup>10</sup> *Michael S. Mina*, 57 ECAB 379 (2006).

<sup>11</sup> *See Michael E. Smith*, 50 ECAB 313 (1999).

<sup>12</sup> A medical report may not be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a physician as defined in 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. *See Merton J. Sills*, 39 ECAB 572, 575 (1988).

<sup>13</sup> *Michael S. Mina*, *supra* note 10 (in assessing medical evidence, the weight of such evidence is determine by its reliability, its probative value and its convincing quality; the opportunity for and thoroughness of examination, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion, are facts which determine the weight to be given to each individual report).

<sup>14</sup> *See Manuel Gill*, 52 ECAB 282 (2001).

<sup>15</sup> *Id.*

<sup>16</sup> *Elizabeth Stanislav*, 49 ECAB 540 (1998).

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 medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>17</sup>

Furthermore, in situations where there are opposing medical reports of virtually equal weight and 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>18</sup>

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

After the Office properly terminated appellant's compensation effective February 26, 2004, the Office found that a conflict in medical opinion existed between the Office referral physician, Dr. Dorsey, and appellant's attending physician, Dr. Raiszadeh, on the issue as to whether appellant had any residuals from her accepted cervical strain and when her accepted cervical strain had resolved. The record, as noted, reflects that Dr. Dorsey found no continuing condition or disability to the February 6, 1990 employment work injury. However, Dr. Raiszadeh found appellant's excessive weight and deconditioning after the work injury resulted in a chronic pain-type syndrome, which could occur in a minority of patients with a whiplash-type injury such as appellant suffered, and that a blanket statement that appellant's cervical strain should have resolved within 120 to 180 days was fallacious. As a conflict properly existed, the Office properly referred appellant to Dr. Marshall for an impartial medical examination.<sup>19</sup>

In an October 10, 2005 report, Dr. Marshall set forth his examination findings and offered his opinions on whether appellant had any residuals from her February 6, 1990 work injury. The Office subsequently sought clarification of Dr. Marshall's October 10, 2005 report regarding the cause of appellant's current condition based on additional evidence received from both appellant and her physicians. Based on Dr. Marshall's October 27, 2006 supplemental report, the Office found that appellant's work-related cervical strain had resolved in 1991, one year following her injury, and that appellant was not entitled to compensation benefits after February 26, 2004, the date when the Office terminated her compensation benefits.

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<sup>17</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>18</sup> *See Gloria J. Godfrey*, 52 ECAB 486 (2001).

<sup>19</sup> Section 8123(a) of the Act provides 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. 5 U.S.C. § 8123(a).



In his October 27, 2006 supplemental report, Dr. Marshall opined that the February 6, 1990 work injury resulted in a temporary aggravation or exacerbation of her cervical spine condition. He explained that the motor vehicle accident at work did not generate enough force to cause any permanent damage and appellant's long-term symptoms were due to her previous motor vehicle accidents and her osteoarthritis condition, which were present in multiple levels of her spine. Dr. Marshall opined that appellant reached preinjury status one year after her work injury, as she had adequate time and therapy of one year. He addressed the Office's other concerns and advised that the record did not support Dr. Raiszadeh's statement that appellant became deconditioned after her work injury as she was functioning on her own from 1991 through 2000 with no evidence of treatment or statements of a worsening of her condition.

It is well established that, when 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.<sup>20</sup> As Dr. Marshall thoroughly explained his findings and conclusions, the Board finds that the Office properly determined that appellant had not met her burden of proof to establish that she was entitled to compensation benefits after February 26, 2004.

### **CONCLUSION**

The Board finds that the Office met its burden of proof to terminate appellant's compensation benefits effective February 26, 2004 and appellant failed to establish that she continued to be disabled after that date.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated December 8, 2006 is affirmed.

Issued: May 6, 2008  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>20</sup> See *Gloria J. Godfrey*, *supra* note 18.