

¹ For Office decisions issued prior to November 19, 2008, a claimant had one year to file an appeal to the Board. An appeal from Office decisions issued on or after November 19, 2008 must be filed within 180 days of the decision. 20 C.F.R. § 501.3(e) (2008).

FACTUAL HISTORY

On January 12, 2006 appellant, then a 50-year-old rural carrier, sustained injury in a motor vehicle accident while in the performance of duty. She stopped work on that date. On February 6, 2006 the Office accepted appellant's claim for a cervical sprain and lacerations of her face. Appellant received compensation for intermittent periods of disability.

In a December 27, 2006 report, Dr. David B. Basch, an orthopedic surgeon, diagnosed chronic cervical strain with herniated disc at C5-6 and persistent radiculopathy on the left. He advised that appellant's current symptoms and injuries were directly related to the January 12, 2006 injury. Dr. Basch noted that she remained symptomatic despite conservative care.

On January 14, 2007 appellant underwent a magnetic resonance imaging (MRI) scan of the cervical spine. It was interpreted by Dr. Rebecca Johnson, a Board-certified radiologist, as showing a central right disc herniation with mild central canal narrowing and moderate bilateral foraminal narrowing at C2-3; a broad-based disc herniation without significant foraminal narrowing at C3-4; a stable concentric disc bulge with small central disc herniation at C4-5 and disc bulging with degenerative disease resulting in severe narrowing of the right foramen at C5-6.

In a March 1, 2007 report, Dr. Joel H. Spielman, an attending Board-certified orthopedic surgeon, noted that diagnostic testing documented moderate left C6 radiculopathy and that the MRI scan confirmed central C5-6 disc herniation. In a March 29, 2007 report, he indicated that appellant was doing fairly well and required no narcotic analgesic agents. Dr. Spielman noted that she was working full time. He advised that he hoped to avoid surgical intervention unless her symptoms became markedly worsened. In a July 3, 2007 report, Dr. Spielman noted that appellant returned for follow up with an exacerbation of neck pain. In an October 4, 2007 note, he found that she was unable to work from July 27 through 30, 2007 due to neck pain. In an October 4, 2007 report, Dr. Spielman noted that appellant's neck symptoms were markedly worse.

On October 1, 2007 the Office referred appellant to Dr. David Rubinfeld, a Board-certified orthopedic surgeon, for a second opinion examination. In an October 13, 2007 report, Dr. Rubinfeld reviewed the history of injury and medical treatment. He noted that appellant had not undergone surgery of the cervical spine, which was under consideration pending the results of further diagnostic testing. Dr. Rubinfeld noted that appellant was continuing to work. On examination, he listed measurements on range of motion, including the cervical spine and upper extremities. Dr. Rubinfeld noted that motor strength and deep reflex testing was normal with sensation intact. He diagnosed cervical spine strain with possible radiculopathy. Dr. Rubinfeld advised that appellant's condition was a temporary aggravation of the degenerative disease of the cervical spine and that the aggravation caused by the employment injury had ceased. He noted no objective findings on examination and no present disability. Dr. Rubinfeld concluded that appellant's subjective complaints were not supported by objective findings on physical examination, but the MRI scan findings showed degenerative disc disease. In an attached work restriction form, he advised that maximum medical improvement had been reached and that appellant would work full time without limitations.

The Office found a conflict in medical opinion between Dr. Spielman and Dr. Rubinfeld as to the nature and extent of residual disability due to the accepted work injury. On February 8, 2008 it referred appellant to Dr. David J. Feldman, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a February 20, 2008 report, Dr. Feldman reviewed a history of the January 12, 2006 motor vehicle accident, noting that appellant was wearing a seatbelt when she was rear-ended and struck her head on the door of the truck.² He noted she was working full time as a rural carrier. On examination, Dr. Feldman noted mild impingement about the right shoulder with remaining rotator cuff testing negative on the right and left. He reported cervical spine range of motion, noting mild muscle tightness without localization or tenderness in the cervical spine. X-rays showed slight scoliosis in the thoracic spine with degenerative disease at multiple levels of the cervical spine and a C5-6 midline disc herniation. Dr. Feldman reviewed the medical evidence of record and concluded that appellant sustained a herniated cervical disc as a result of the January 12, 2006 motor vehicle accident. He noted that examination demonstrated a right rotator cuff impingement syndrome and lateral epicondylitis. While prior diagnostic testing showed cervical radiculopathy, the major presentation on examination pertained to the rotator cuff impingement and lateral epicondylitis, both of which were position and overuse repetitive stress syndromes as a result of her work-related activities and not related to the motor vehicle accident of January 12, 2006. Dr. Feldman noted treatment recommendations included physical therapy for both the shoulder and lateral epicondylar symptoms of both forearms. He noted that other than the previous review of records for the cervical spine, which could be appropriately managed as per spine consultation, no additional treatment would be given. To avoid additional stress of the shoulder, Dr. Feldman recommended that appellant under an ergonomic evaluation of her work routine, with regard to sitting and the height when lifting or sorting mail.

In a March 17, 2008 report, Dr. Spielman stated that appellant remained neurologically intact and was working full-time full duty and was not on any anti-inflammatory medication.

On March 26, 2008 the Office proposed terminating appellant's compensation benefits related to the accepted motor vehicle accident. It noted that the weight of medical opinion established that she no longer had any disability or residuals of her cervical sprain or face lacerations.

In an April 29, 2008 decision, the Office terminated appellant's compensation benefits as of that date.

In an April 28, 2008 note, Dr. Spielman advised that anterior cervical fusion at C5-6 could be completed to relieve appellant's symptoms, but would not be considered part of her workers' compensation claim. Regardless of cause, appellant had severe cervical spondylosis with degenerative disc disease and would likely benefit from surgery.

On May 14, 2008 appellant requested review of the written record by an Office hearing representative.

² Dr. Feldman noted a nonemployment-related automobile accident on June 29, 2007 which resulted in low back complaints.

In an October 14, 2008 decision, an Office hearing representative affirmed the termination of benefits based on the opinion of Dr. Feldman, the impartial medical examiner.

By letter dated April 7, 2009 appellant, through her attorney, requested reconsideration of the termination decision.

In a May 7, 2009 report, Dr. Spielman discussed his treatment of appellant and noted that it was reasonable to assume that the January 12, 2006 motor vehicle accident caused the C5-6 disc herniation. He noted that appellant was treated with conservative modalities and that surgery remained an option if her symptoms worsened. Dr. Spielman noted that he previously believed her symptoms were related to cervical spondylosis and degenerative disc disease. Upon review of appellant's MRI scans, the studies all documented a C5-6 disc herniation rather than cervical spondylitic change.

In a decision dated June 26, 2009, the Office denied modification of the October 14, 2008 decision.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.³ The Office may not terminate compensation without establishing that the disability ceased or that it is no longer related to the employment.⁴ Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁵ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement 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 requires further medical treatment.⁶

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.⁷ In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialty for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁸

³ *I.J.*, 59 ECAB ___ (Docket No. 07-2362, issued March 11, 2008); *Fermin G. Olacoaga*, 13 ECAB 102, 104 (1961).

⁴ *J.M.*, 58 ECAB 478 (2007); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁵ *T.P.*, 58 ECAB 524 (2007); *Larry Warner*, 43 ECAB 1027 (1992).

⁶ *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

⁷ 5 U.S.C. § 8123(a).

⁸ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

ANALYSIS

The Office accepted that appellant sustained a cervical sprain and lacerations to her face in the January 12, 2006 motor vehicle accident. Appellant returned to work and received wage-loss compensation for intermittent disability and medical benefits for ongoing treatment.

Due to a conflict in medical opinion as to the nature and extent of her residual disability between Dr. Spielman and Dr. Rubinfeld, the Office referred appellant to Dr. Feldman for an impartial medical examination. The Board finds that the report of Dr. Feldman does not establish that medical residuals related to the accepted motor vehicle accident have resolved.

While appellant's claim was accepted for a cervical strain and several facial lacerations, Dr. Feldman found that the employment injury of January 12, 2006 caused appellant's herniated disc at C5-6. He noted full motion of the cervical spine on examination without provocative nerve complaints and a negative Spurling test. Dr. Feldman found that prior diagnostic testing showed cervical radiculopathy but stated that appellant's major presentation was of rotator cuff impingement and later epicondylitis. He stated that these conditions were due to position and overuse repetitive stress syndromes as a result of her daily work and activities and not related to the accepted motor vehicle accident. Dr. Feldman did not specifically find that appellant's cervical strain had resolved and his report did not advise that active medical treatment for appellant's cervical condition was no longer required. He stated that her cervical spine "should be appropriately managed as per spine consultation as recommended." Dr. Feldman's statement on whether appellant's cervical radiculopathy had resolved is not clear as he noted her "major presentation" on examination related to rotator cuff impingement on the right with lateral epicondylitis, which he related to her duties as a rural carrier. He did not address the issue of whether the accepted injury had aggravated appellant's degenerative disc disease of the cervical spine, as was found by Dr. Rubinfeld, or the period of any such aggravation. Several aspects of Dr. Feldman's opinion require clarification. Therefore, the Office did not meet its burden of proof to terminate appellant's compensation.

CONCLUSION

The Board finds that the Office did not meet its burden of proof to terminate appellant's compensation benefits related to her January 12, 2006 injury.

ORDER

IT IS HEREBY ORDERED THAT the June 26, 2009 and October 14, 2008 decisions of the Office of Workers' Compensation Programs be reversed.⁹

Issued: August 13, 2010
Washington, DC

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

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

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

⁹ In view of the disposition of the first issue, the second issue regarding continuing employment-related disability is moot.