

**United States Department of Labor
Employees' Compensation Appeals Board**

M.W., Appellant

and

**DEPARTMENT OF HOUSING & URBAN
DEVELOPMENT, New York, NY, Employer**

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**Docket No. 10-826
Issued: December 2, 2010**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 3, 2010 appellant filed a timely appeal of the January 8, 2010 merit decision of the Office of Workers' Compensation Programs. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly terminated appellant's compensation benefits effective January 17, 2010 on the grounds that she no longer had any residuals or disability causally related to her March 8, 1991 employment injuries.

On appeal, appellant contends that the medical evidence of record is sufficient to establish that she continues to suffer from residuals and total disability due to her accepted employment injuries.

FACTUAL HISTORY

The Office accepted that on March 8, 1991 appellant, then a 39-year-old loan assistant, sustained neck trauma, back and chest contusion and postconcussion syndrome while in the performance of duty. Appellant stopped work on March 11, 1991.

Medical reports from Dr. Mitchell Kurk, an attending family practitioner, found that appellant had continuing residuals and she was totally disabled for work due to her accepted March 8, 1991 employment injuries.

On February 6, 2009 the Office referred appellant, together with a statement of accepted facts and medical record to Dr. Stanley Soren, a Board-certified orthopedic surgeon, for a second opinion medical examination to determine the nature and extent of her employment-related injuries and disability and appropriate treatment. In a February 25, 2009 medical report, Dr. Soren found that appellant had no residuals of her accepted employment injuries. Appellant's current low back symptoms were related to her underlying excessive and chronic obesity condition. Dr. Soren stated that appellant could perform her usual work duties as a loan assistant with no restrictions. Appellant did not require any further medical treatment.

On April 27, 2009 the Office found a conflict in the medical opinion evidence between Dr. Kurk and Dr. Soren as to whether appellant had any residuals and disability causally related to her March 8, 1991 employment injuries. On June 22, 2009 it referred her, together with a statement of accepted facts and medical record to Dr. Michael J. Katz, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a July 17, 2009 report, Dr. Katz obtained a history of appellant's March 8, 1991 employment injuries and medical treatment. He noted her complaints of hip and back problems. Dr. Katz listed normal findings on physical examination with regard to appellant's cervical and lumbar spine, chest and right shoulder, arm, hip and knee. He opined that appellant's employment-related conditions had resolved. Dr. Katz stated that she had right arm and knee contusions which had also resolved and that she did not suffer from any medical conditions, except obesity, that required further medical treatment. He noted that no further diagnostic testing was required and no further medical treatment was warranted. Dr. Katz concluded that appellant was not currently totally disabled and that she was capable of performing her usual full-duty work as a loan assistant with no restrictions.

On December 7, 2009 the Office issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits based on Dr. Katz's July 17, 2009 medical opinion. Appellant was afforded 30 days to respond to this notice.

In a December 14, 2009 report, Dr. Kurk noted appellant's complaints of continuing pain, limited range of motion of the low back and right hip which interfered with her ability to stand, climb stairs and ambulate. Appellant also complained that her back condition was aggravated by prolonged sitting and obesity. Based on these complaints, Dr. Kurk opined that appellant was totally disabled for her date-of-injury position or an equivalent position as the former position required walking and standing for long periods of time. He stated that her return to work would be most damaging to her psychologically and may cause profound depression.

In a January 8, 2010 decision, the Office terminated appellant's compensation for wage-loss and medical benefits with regard to her accepted employment-related injuries, effective January 17, 2010. The medical evidence submitted was found insufficient to outweigh the special weight accorded to Dr. Katz's impartial medical opinion.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to her employment, it may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.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 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.³

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.⁴

ANALYSIS

The Board finds that the Office met its burden of proof to terminate appellant's wage-loss compensation and medical benefits as of January 17, 2010 on the grounds that she had no residuals or disability of the accepted employment-related neck trauma, back and chest contusion and postconcussion syndrome. The Office properly determined that there arose a conflict in the medical opinion evidence between Dr. Kurk, an attending physician, and Dr. Soren, an Office referral physician, regarding whether she had any residuals or disability causally related to the March 8, 1991 employment injuries. Dr. Kurk opined that appellant's continuing residuals and total disability were due to the employment injuries. Dr. Soren opined that the employment injuries had resolved and she could return to her regular work duties as a loan assistant with no restrictions.

The Office referred appellant to Dr. Katz, the impartial medical specialist who provided an accurate history of injury and detailed normal findings on physical examination. Based on the normal findings, Dr. Katz concluded that the accepted employment conditions had resolved and that the only medical condition appellant suffered from was obesity. He further concluded that appellant was not totally disabled, that further diagnostic testing and medical treatment were not

¹ *Jason C. Armstrong*, 40 ECAB 907 (1989).

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

³ *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

⁴ *Gloria J. Godfrey*, 52 ECAB 486 (2001).

necessitated and that she was capable of resuming her date-of-injury position as a loan officer without restrictions.

The Board finds that Dr. Katz's opinion is entitled to special weight accorded an impartial medical specialist and is sufficiently well reasoned and detailed to resolve the conflict of medical opinion evidence. Dr. Katz provided extensive findings on physical examination and explained why appellant's current symptoms and disability were not causally related to the March 8, 1991 employment-related neck trauma, back and chest contusion and postconcussion syndrome. The Board finds, therefore, that the Office met its burden of proof to terminate appellant's compensation and medical benefits effective January 17, 2010.

The Board further finds that appellant did not submit any rationalized medical evidence to overcome the weight of Dr. Katz's opinion or to create a new conflict. Dr. Kurk's December 14, 2009 report found that appellant was totally disabled from her date-of-injury position or an equivalent position as the former position required her to walk and stand for long periods of time. He further found that she may develop profound depression if she returned to work. As stated, Dr. Kurk formed one part of the conflict in the medical opinion evidence for which appellant was referred to Dr. Katz. Therefore, the Board finds that his report is insufficient to create a new conflict in the medical evidence or to overcome the well-rationalized medical opinion of Dr. Katz, the impartial medical specialist.⁵

Appellant's contention on appeal that she continues to suffer from residuals and total disability due to her accepted March 8, 1991 employment injuries is not borne out by the evidence of record. The Board finds the special weight of the medical evidence, as represented by Dr. Katz, the impartial medical specialist, establishes that she has no continuing employment-related residuals or disability and, thus, the Office properly terminated her compensation benefits.

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation benefits effective January 17, 2010 on the grounds that she no longer had any residuals or disability causally related to her accepted employment-related neck trauma, back and chest contusion and postconcussion syndrome.

⁵ See *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael Hughes*, 52 ECAB 387 (2001).

ORDER

IT IS HEREBY ORDERED THAT the January 8, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 2, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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