

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DEBBIE K. BOWMAN and U.S. POSTAL SERVICE,  
POST OFFICE, Jacksonville, FL

*Docket No. 03-490; Submitted on the Record;  
Issued April 1, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation and medical benefits on December 3, 2002 on the basis that her work-related injury causally related to her June 4, 1994 employment injury had ceased.

The Office accepted that appellant, a 41-year-old letter carrier sustained a cervical sprain and whiplash during a motor vehicle accident on June 4, 1994, while performing the duties of her federal employment.<sup>1</sup> Appellant stopped working on the day of the accident and returned to limited duty on June 7, 1994. The Office later accepted that in February 1996, appellant sustained a recurrence of her cervical condition causally related to the original injury. The Office paid appellant appropriate wage-loss compensation for lost time from work.

In a decision dated November 8, 2001, the Office terminated appellant's wage-loss compensation and medical benefits.<sup>2</sup> The Office based its determination on the July 25 and September 13, 2001 reports of Dr. Steven Lancaster, a Board-certified orthopedic surgeon and Office referral physician. He found that appellant had no residuals of her accepted cervical sprain and whiplash and that her ongoing symptoms likely resulted from a degenerative cervical

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<sup>1</sup> Appellant filed a claim for a schedule award due to the June 4, 1994 injury, which was denied on May 7, 1998 on the grounds that the evidence of record did not reflect that appellant had a work-related permanent impairment. The Office, however, advised that appellant was still entitled to medical benefits for the effects of the work injury. On June 7, 1998 appellant requested a review of the written record. By decision dated October 1, 1998, an Office hearing representative affirmed the prior decision finding that the medical evidence failed to support that appellant had a permanent impairment of one or both of her upper extremities as a result of the accepted employment injury. Appellant then filed a recurrence of disability claim on December 15, 2000 asserting that her condition at that time resulted from the June 4, 1994 employment injury. The record does not reflect whether the Office issued a decision on this claim.

<sup>2</sup> On October 3, 2001 the Office issued a notice of proposed termination of entitlement to compensation and medical benefits.

spine condition due to her fibromyalgia, diagnosed by her treating physicians, that had developed since 1994.

By facsimile received November 16, 2001, appellant requested an oral hearing with the Branch of Hearings and Review, which was held on June 28, 2002. By decision dated September 9, 2002, an Office hearing representative determined that a conflict in the medical evidence existed and remanded the case to the Office. The hearing representative determined that the opinion of Dr. Lancaster, the Office physician, was lacking in medical rationale while appellant's treating physicians, Dr. Georges El-Bahri, a Board-certified orthopedic surgeon, and Dr. Victor Marqura, a Board-certified neurologist, supported that appellant had an ongoing cervical condition related to the work injury.

On remand, the Office referred appellant to Dr. Harold Lynn Norman, a Board-certified orthopedic surgeon, who in reports dated October 23 and 24, 2002, reviewed his evaluation of appellant's ongoing complaints of pain and medical findings.

In the October 23, 2002 report, Dr. Norman discussed the June 4, 1994 employment injury, which resulted in cervical sprain and whiplash accepted by the Office, appellant's medical care and diagnostic findings and further her subjective complaints on examination. He reported that a magnetic resonance imaging (MRI) scan dated August 17, 2001 revealed some mild disc bulge at C3-5 but no actual disc impingement on the cord or nerve roots. Dr. Norman concluded that appellant had a history of myofascial disc disease or cervical spine and history of depression.

In the October 24, 2002 report, Dr. Norman outlined that appellant complained of localized pain in her neck, posterior shoulder, anterior aspect of the upper chest, right arm and both her legs. He reported that appellant's medical records were reviewed and that a December 7, 1994 report from her treating physician indicated that the range of motion of appellant's cervical spine was full and that she had no reflex changes. Dr. Norman stated that appellant's orthopedic physical examination was normal and although she had multiple areas of subjective complaints of pain, there was no restricted motion of the upper or lower extremities, no localized neurologic changes and no sensory deficits. He further stated:

“The effects of the cervical sprain that [appellant] sustained in 1994 has fully resolved. Her current treating physicians have diagnosed fibromyalgia which is a diffuse musculoskeletal symptom complex of aches and pains accompanied by exaggerated point tenderness areas. The etiology is unknown and there are no diagnostic laboratory tests....

“[Appellant] has been told and believes that a cervical sprain caused her fibromyalgia. There is no medical basis whatsoever, for that association.

“Based upon [appellant's] current physical exam[ination], I would not impose any work restrictions. She does describe self-limited restrictions that she reports are due to pain and aching discomfort; however, those restrictions are not supported by the physical exam[ination]. She does not need any further orthopedic treatment for the accepted condition of cervical sprain.”

Dr. Norman opined that despite her subjective complaints, appellant, was capable of performing work duties without any restrictions.

In a decision dated December 3, 2002, the Office terminated appellant's wage-loss compensation and medical benefits based on the independent medical examination by Dr. Norman.<sup>3</sup>

The Board finds that the Office met its burden of proof when it terminated appellant's compensation and medical benefits on December 3, 2002, on the basis that appellant's work-related injury causally related to her June 4, 1994 employment injury had ceased.

It is well established that once the Office has accepted 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 his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment. Thus, the burden of proof is on the Office, rather than the employee with respect to the period subsequent to the date when compensation is terminated or modified.<sup>4</sup>

In this case, an Office hearing representative determined following the November 8, 2001 termination that conflicting medical evidence existed as to whether appellant's accepted conditions had ceased, which required further development.

In noted reports of record, both of appellant's attending physicians, Drs. El-Bahri and Marqura supported that she had an ongoing cervical condition related to the work injury. However, Dr. Lancaster, the second opinion physician, found that appellant had no residuals of her accepted cervical sprain and whiplash and that her pain likely resulted from a degenerative cervical spine condition due to fibromyalgia that had developed since 1994. The Office hearing representative set aside the November 8, 2001 decision and remanded the case for further development.

Section 8123(a) of the Federal Employees' Compensation Act provides that, "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."<sup>5</sup>

Given the conflict in the medical evidence, the Office properly referred appellant to an impartial physician for a medical evaluation. Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently reasoned upon a proper factual background, must be given special weight.<sup>6</sup> The Office relied on

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<sup>3</sup> On December 2, 2002 the Office issued a notice of proposed termination of entitlement to compensation and medical benefits.

<sup>4</sup> *Eddie Franklin*, 51 ECAB 223 (Docket No. 98-1240, issued December 14, 1999); *Craig M. Crenshaw, Jr.*, 40 ECAB 910, 922 (1989); *Edwin L. Lester*, 34 ECAB 1807 (1983).

<sup>5</sup> 5 U.S.C. § 8123.

<sup>6</sup> *Roger Dingess*, 47 ECAB 123 (1995).

Dr. Harold Lynn Norman's opinion, a Board-certified orthopedic surgeon, selected to act as an impartial medical examiner, who in reports dated October 23 and 24, 2002 concluded that appellant had no continuing work-related cervical condition and that appellant was capable of performing unrestricted work duties.

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>7</sup>

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Harold Lynn Norman. After reviewing appellant's complaints, reviewing her medical history, including the June 4, 1994 work-related injury and medical testing and conducting a physical examination, Dr. Norman opined that appellant's orthopedic physical examination was normal and that she needed no further orthopedic treatment for the accepted conditions. He indicated that although appellant had multiple areas of subjective complaints of pain, there was no restricted motion of the upper or lower extremities, no localized neurologic changes and no sensory deficits. Dr. Norman discussed the results of a current MRI scan and, in conjunction with his examination findings, opined that, although appellant believed that her cervical sprain caused her to suffer from the condition of fibromyalgia, he found no medical basis for that association. He explained that fibromyalgia was a musculoskeletal symptom complex of aches and pain with exaggerated tenderness, but that the etiology was unknown. Dr. Norman stated that the MRI revealed some mild disc bulge at C3-5 but no actual disc impingement on the cord or roots. He concluded that appellant had a history of myofascial disc disease or cervical spine but that the effects of the work-related injury had fully resolved. The Office correctly found that the weight of the medical evidence rested with the independent medical opinion of Dr. Norman as it was sufficiently probative, rationalized and based upon a proper factual background. Therefore, the Office acted correctly in according the opinion of Dr. Norman the special weight of an impartial medical examiner.<sup>8</sup>

The Board concludes that the Office met its burden of proof in terminating appellant's entitlement to benefits.

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<sup>7</sup> *Charles E. Burke*, 47 ECAB 185, 191 (1995).

<sup>8</sup> *Gary R. Seiber*, 46 ECAB 215 (1994).

The decision of the Office of Workers' Compensation Programs dated December 3, 2002 is affirmed.

Dated, Washington, DC  
April 1, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member