

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOHANNA MEDINA and U.S. POSTAL SERVICE,  
POST OFFICE, Chicago, IL

*Docket No. 03-724; Submitted on the Record;  
Issued May 28, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant had any disability for work or injury residuals requiring further medical treatment after April 26, 2002, the date the Office of Workers' Compensation Programs terminated her compensation and medical benefits, causally related to her February 20, 1999 accepted employment injuries.

The Office accepted that on February 20, 1999 appellant, then a 24-year-old letter carrier, sustained cervical radiculopathy, lumbar radiculopathy, a lumbar disc protrusion and vascular headaches when a mail case shelf fell on her back. Appellant stopped work following the accident, underwent treatment and was cleared by her treating physician to return to full duty on March 2, 1999. Appellant returned to full duty, served a suspension from May 10 until May 17, 1999 and filed a recurrence of disability claim alleging that she sustained a recurrence of disability on May 21, 1999.

The Office accepted that commencing May 21, 1999 appellant sustained a recurrence of disability. The conditions accepted were cervical and lumbar radiculopathy.

In a June 21, 1999 report, Dr. Jose L. Medina, a Board-certified neurologist of professorial level, reviewed appellant's factual and medical history, her current complaints and her general examination results and he identified stiffness, tenderness and spasm in the paraspinal muscles of appellant's cervical and lumbar spine. He also noted weakness and hyporeflexia in the right brachioradialis and hypesthesia in the right forearm and posterior aspect of the right leg. Dr. Medina provided range-of-motion measurements and laboratory testing results, indicating that electromyographic (EMG) testing revealed active moderate bilateral L5 radiculopathy and magnetic resonance imaging (MRI) revealed an L4-5 bulge, an L5-S1 bulge and L5-S1 desiccation. Dr. Medina diagnosed vascular headaches, cervical radiculopathy, lumbar radiculopathy, lumbar disc protrusions and cervicogenic headaches and he opined that appellant was totally disabled for work. He indicated that he anticipated appellant's release to work on July 6, 1999 with multiple activity restrictions.

Appellant returned to a light-duty position on September 18, 1999 processing undeliverable mail, but stopped again on January 10, 2000 and remained off work thereafter.

By report dated January 28, 2000, Dr. Medina noted that appellant continued to complain of radicular pain radiating into the right lower extremity, that she had stiffness, tenderness and spasm in the paraspinal muscles of appellant's cervical and lumbar spine and that EMG testing on October 4, 1999 revealed active, moderate ongoing damage to the right lumbar five radiculopathy. He opined that appellant was totally disabled for work due to the lumbar radiculopathy and lumbar disc protrusion.

Appellant underwent a discogram on February 7, 2000 which was reported as revealing an annular tear at L2-3, Grade 5, an annular tear at L3-4, Grade 3, an annular tear at L5-S1 and pain at L2-3 at 8/10 and to the right, Grade 4-5 tear, posterior quadrant; pain at L3-4 at 8/10 to the right, Grade 3 tear, posterior quadrant and pain at L5-S1 at 5/10, Grade 2 tear, posterior quadrant.

An electrodiagnostic report consisting of an EMG and a nerve conduction velocity (NCV) study dated March 30, 2000 was reported by Dr. Medina as revealing moderate, active, ongoing right lumbar five radiculopathy.

By report dated April 1, 2000, Dr. Medina discussed appellant's symptoms and opined that she remained totally disabled for work and had been since January 10, 2000.

The Office determined that a second opinion evaluation of appellant's condition was necessary and it referred appellant, together with a statement of accepted facts, questions to be addressed and the relevant case record, to Dr. Steven C. Delheimer, a Board-certified neurosurgeon, for examination. By report dated May 8, 2000, Dr. Delheimer reviewed appellant's factual and medical history, noted diagnostic testing results, reported neurologic examination results and opined that appellant "has subjective complaints of pain that are not corroborated by any type of objective findings, either on her neurologic[al] exam[ination] or MRI." He further noted as follows:

"[Appellant's] descriptions of pain are far in excess of changes seen on the MRI which is essentially normal. The mechanism of injury, with shelves striking her back, is not compatible with any type of discogenic disease, especially in the absence of radicular complaints, neurologic findings and a normal MRI. In addition, there are multiple positive Waddell['s] signs, with evidence of symptom magnification which would probably lead to a poor surgical outcome.

"Although there are noted to be multiple findings on her discogram, this test is not universally acceptable within either the neurosurgical or orthopedic disciplines. The findings are certainly not objective, in that they are dependent upon a patient's description of pain and injection of the disc spaces [is] painful in and of itself. Furthermore, the findings of tears on multiple levels, cannot be correlated with her symptoms. In addition, spinal catheterization of L2-3, L3-4 and L5-S1 is an experimental study, again not uniformly accepted within disciplines of neuro or orthopedic surgery. In is my opinion that this procedure should not be carried

out because it is unlikely to benefit [appellant] with improvement in her symptoms.”

In answer to specific interrogatories, Dr. Delheimer responded that appellant’s subjective complaints were not corroborated by any type of objective findings, that the mechanism of injury was not compatible with any type of discogenic disease, especially in the absence of radicular complaints, neurologic findings and a normal MRI. Dr. Delheimer opined that, in the absence of radicular complaints, neurologic findings and a normal MRI, he had no other recourse than to release appellant to return to work without restrictions. He further opined that, in the absence of radicular complaints, neurologic findings and a normal MRI, he did not feel appellant required further future treatment.

An August 14, 2000 electrodiagnostic report performed by Dr. Medina was reported as showing moderate, active, ongoing right lumbar three radiculopathy. The numerical findings were provided and the test consisted of both EMG and NCV studies.

On October 19, 2000 the Office determined that an impartial medical opinion examination was required to resolve the conflict between Dr. Medina and the office second opinion specialist Dr. Delheimer, and it referred appellant, together with a statement of accepted facts, questions to be addressed and the relevant case record, to Dr. Marshall I. Matz, a Board-certified neurosurgeon, for examination. By report dated November 1, 2000, Dr. Matz reviewed appellant’s factual and medical history, noted her recent history of medical treatment referring to her back and presented his examination results. Dr. Matz noted that appellant exhibited a great deal of pain behavior, an exaggerated right give-way limp, exquisite tenderness to minimal skin touch and profound subjective give-way throughout the muscle groups of both lower extremities. He noted that sitting straight leg raising was markedly inconsistent with supine leg raising and opined that appellant’s current presentation is of profound symptom magnification. Dr. Matz opined that there was no indication that any of appellant’s symptoms were related to any low back derangement of an anatomic nature, that she had received a great deal of unnecessary treatment and that there was no indication that she needed any further medical treatment.

A March 9, 2001 electrodiagnostic report performed by Dr. Medina was reported as showing right lumbar radiculopathy. The numerical findings were provided and the test consisted of both EMG and NCV studies.

In a report dated July 4, 2001, Dr. Medina reviewed appellant’s complaints, reported results upon physical examination, noted laboratory data and diagnosed cervical radiculopathy, lumbosacral radiculopathy, vascular headaches, cervicogenic headaches, lumbar disc tears and lumbar bulging discs.

By notice dated March 4, 2002, the Office advised appellant that it proposed termination of her compensation and medical benefits on the grounds that she had no further disability for work or injury residuals which required further medical treatment. The Office indicated that the report from Dr. Matz constituted the weight of the medical evidence opinion as he resolved the conflict in medical evidence opinion. The Office advised appellant that she had 30 days within which to provide additional evidence of argument as she disagreed with this proposed action.

In a report dated March 28, 2002, Dr. Medina provided an updated assessment reviewing appellant's history and subjective complaints, noted physical examination results and opined that she had not improved over the preceding year. Dr. Medina stated that bulging discs were not visible when a patient lies down such that the MRI would be negative.

Nothing further was received from appellant.

By decision dated April 26, 2002, the Office finalized the proposed termination of appellant's compensation and indicated that no further treatment was authorized at Office expense. The Office reiterated that Dr. Matz's report constituted the weight of the medical evidence of record as he resolved the conflict in medical evidence opinion.

Thereafter appellant requested an examination of the written record by an Office hearing representative and in support she resubmitted multiple reports previously of record. Appellant submitted a March 23, 2002 report from Dr. Medina of the lumbar MRI performed that date. Dr. Medina noted that decreased signals characteristics were noted at L4-5 and L5-S1 disc spaces, which was indicative of dehydration and degenerative changes. He also noted that a partial tear of the annulus fibrosus was noted at L5-S1, that there was circumferential, diffuse, symmetric bulging of the annulus fibrosus noted at levels L4-5 and L5-S1, that the neural foramina were bilaterally narrowed at L4-5 and L5-S1 and that there was spinal canal stenosis at 10 millimeters at L5-S1 which was mild in the supine position when the MRI was performed but was increased during sitting and standing.

By decision dated October 24, 2002, the Office hearing representative affirmed the April 26, 2002 termination decision finding that the well-rationalized report of Dr. Matz was entitled to special weight as it resolved the conflict in medical evidence and established that the grounds that she had no further disability for work or injury residuals which required further medical treatment.

The Board finds that this case must be reversed.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>1</sup> After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.<sup>2</sup> Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.<sup>3</sup> To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-

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<sup>1</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

<sup>2</sup> *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

<sup>3</sup> *Marlene G. Owens*, 39 ECAB 1320 (1988).

related condition that requires further medical treatment.<sup>4</sup> The Office has not met its burden in this case.

In this case, appellant's treating physician, Dr. Medina, continued to diagnose appellant as having lumbar radiculopathy, based upon the results of EMG and NCV testing. However, Dr. Delheimer disregarded these findings and did not discuss the positive results of EMG and NCV testing, but instead focused only on the MRI findings and declared, without support, that appellant had no objective neurologic findings, contrary to the findings on the electrodiagnostic reports. Dr. Delheimer focused mostly on the presence of positive Waddell's signs and symptom magnification in determining that appellant had no objective symptomatology.

The Federal Employees' Compensation Act, at 5 U.S.C. § 8123(a), in pertinent part, provides: "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."

A conflict in medical evidence was therefore properly found between Dr. Medina and Dr. Delheimer and appellant was properly referred, with supporting information, to Dr. Matz, for an impartial medical examination to resolve the existing conflict.

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.<sup>5</sup>

However, in this case, the impartial medical specialist, Dr. Matz focused on appellant's pain behavior, exaggerated limp, exquisite tenderness to light touch and inconsistent straight leg raising to conclude that appellant had profound symptom magnification. He concluded that there was no evidence of low back derangement of an anatomic nature and that past present and future treatment was unnecessary. Dr. Matz did not, however, address the positive EMG and NCV findings obtained on the electrodiagnostic studies or the diagnosis of ongoing lumbar radiculopathy made by Dr. Medina. As Dr. Matz's impartial medical report did not address all of the evidence of record, particularly that supporting lumbar radiculopathy as diagnosed by Dr. Medina, his report is incomplete and does not resolve the conflict in medical opinion evidence on the presence of absence of lumbar injury-related radiculopathy, an accepted condition.

As Dr. Matz's report does not address whether appellant has ongoing lumbar radiculopathy, an accepted condition, it does not establish that appellant has no further lumbar-radiculopathy-related disability for work or radiculopathy-related residuals which require further medical treatment. As his report merely points out symptom magnification and pain behaviors, but does not resolve the question at hand, it cannot constitute the weight of the medical opinion

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<sup>4</sup> See *Calvin S. Mays*, 39 ECAB 993 (1988); *Patricia Brazzell*, 38 ECAB 299 (1986); *Amy R. Rogers*, 32 ECAB 1429 (1981).

<sup>5</sup> *Aubrey Belnavis*, 37 ECAB 206, 212 (1985).

evidence of record and therefore the Office did not meet its burden of proof to terminate appellant's radicular injury-related compensation and medical benefits.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated October 24 and April 26, 2002 are therefore reversed.

Dated, Washington, DC  
May 28, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member