

and contusion of the left shoulder. Appellant stopped working on the date of the accident and returned to limited-duty work on December 16, 2002 as a rural carrier working only one day a week. Appellant stopped working again on April 25, 2003, and filed a claim for compensation from April 25 to May 31, 2003.

By letter dated March 25, 2003, the Office referred appellant to Dr. Robert W. Moore, a Board-certified orthopedic surgeon. On April 23, 2003 Dr. Moore interviewed appellant and evaluated her medical records. He opined that the work-related conditions of cervical and thoracic strains and left shoulder contusion were not active, and that appellant could return to her preinjury position. He also noted that there were no further recommendations for continued medical treatment, therapy or work hardening.

By letter dated May 9, 2003, the Office asked Dr. Lloyd Dennis, appellant's treating Board-certified family practitioner, to review and comment on Dr. Moore's report. In a May 28, 2003 medical report, Dr. Dennis indicated that he last saw appellant on April 25, 2003, and that at the time she continued to have radicular symptoms. He noted that it was unlikely that appellant would be able to work at her regular position at this time because of her disc disease, exacerbated by her cervical strain. By letter dated June 10, 2003, the Office requested further information from Dr. Dennis.

By decision dated June 23, 2003, the Office denied appellant's claim for total disability for the period April 25 to May 31, 2003 because she failed to establish by the medical evidence that she was totally disabled from work.

On June 27, 2003 appellant filed a claim for compensation for the period June 1 to 30, 2003.

On June 27, 2003 appellant submitted a May 28, 2003 report from Dr. Dennis who indicated that appellant continued to have radicular symptoms and that it was unlikely that she would be able to work at her regular position because of her disc disease, exacerbated by her cervical strain. In a June 13, 2003 report, Dr. Dennis noted that, due to appellant's pain, she had become depressed and needed a psychiatric evaluation. He noted that appellant was at risk for injury or death as a direct result of her accident and the resulting depression. Dr. Dennis also noted that appellant's cervical spine evaluation was incomplete as she had not been allowed to seek neurosurgery. On June 13, 2003 appellant was hospitalized for major depression and possible premorbid dysthymia.

By letter dated July 1, 2003, the Office requested that appellant submit further information.

In response, appellant submitted a July 17, 2003 progress note from Dr. Dennis, who indicated that appellant continued to experience cervical radiculopathy, depression and shoulder sprain and contusion. Appellant also submitted a July 17, 2003 report from Dr. Dennis, who indicated that appellant was scheduled to have surgery for her C5-6 and C6-7 radiculopathy. He noted her allowable diagnosis as neck sprain, shoulder sprain, contusion, and noted that she had developed cervical radiculopathy as a direct result of her work injury.

Appellant also submitted an April 7, 2003 report from Dr. David W. Lacey, a Board-certified psychiatrist, who indicated that appellant had a chronic cervical strain, probable left cervical radiculopathy and degenerative disc disease of the cervical spine at C5-6 and C6-7. In a May 5, 2003 report, Dr. Lacey indicated that appellant had cervical radiculopathy on physical examination.

On July 28, 2003 appellant submitted a report by Fred T. Lee, Ph.D., a clinical psychologist. He opined that appellant had major depression, single episode that was of sufficient intensity to prevent her from returning to her job. Dr. Lee indicated that appellant's depression was directly influenced by her automobile accident of December 2, 2002 which had physical effects that significantly disrupted her ability to continue in her physical activities and her employment.

In a decision dated August 12, 2003, the Office found that appellant did not meet her burden of proof to establish that she was totally disabled commencing June 1, 2003 as a result of her December 2, 2002 employment injury.

On September 22, 2003 appellant requested reconsideration. She submitted the August 14, 2003 report of Dr. Dennis, who stated:

“[Appellant] does have a history of a previous cervical radiculopathy. She was absolutely symptom free after her 1999 symptoms. She was able to progress with therapy and was doing very well and was successfully able to work out and begin weight lifting program and actually was participating in boxing and making very good progress. She was symptom free and doing quite well up until the time of her accident. Her MRI [magnetic resonance imaging] is well known to you, but both myself the neurosurgeon involved as well as her [physical medicine and rehabilitation specialist] physician do believe clinically (after all we examine the patients) that this patient has progressed as a result of her accident. These are the reasons I feel this should be a work allowed condition.”

In a July 11, 2003 report, Dr. William R. Zerick, a Board-certified neurosurgeon, indicated that appellant had a herniated nucleus pulposus, left C5-6 with cord and nerve root compression, with intractable left C6 radiculopathy.

In a September 11, 2003 report, Dr. Dennis indicated that appellant was in severe pain radiating down her left arm that was a direct result of post-traumatic changes from her accident in December 2002.

By letter dated October 15, 2003, the Office referred appellant to Dr. Gerald S. Steiman, a Board-certified neurologist, to resolve a conflict of medical opinion between Dr. Moore and Dr. Dennis with regard to whether appellant had any residuals from her accepted work injury. In a report dated November 10, 2003, Dr. Steiman opined that appellant's history, a medical record review, and his physical examination did not provide credible evidence that she had residuals of the December 2, 2002 motor vehicle accident. Dr. Steiman disagreed with Dr. Zerick's opinion that appellant had a large disc herniation at the left C5-6 level; he noted that it was possible that Dr. Zerick mistook a prominent osteoarthritic spur for a disc herniation. He noted that appellant

was currently experiencing residuals of the surgical procedure performed by Dr. Zerick, which was due to the presence of this uncinatate (arthritic) spur and not appellant's work injury. He noted that the surgery performed by Dr. Zerick was neither medically necessary nor related to the injury of December 2, 2002. He noted that appellant's pain analysis indicated that appellant had moderate total pain and a severe disability perception. He opined that the pain analysis indicated concerns about appellant's motivation to improve. He also noted that appellant was able to return to her former position of employment without restriction or limitation and continue to work as a rural letter carrier associate with no restrictions or limitations. Dr. Steiman indicated that his opinions were within a reasonable degree of medical certainty.

In a decision dated December 18, 2003, the Office denied modification of the May 20 and July 15, 2003 decisions.

LEGAL PRECEDENT

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that an employee can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and to show that he or she cannot perform such light duty. As part of this burden the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.¹

Where there exists a conflict in medical opinion 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 upon a proper factual background, is entitled to special weight.²

ANALYSIS

Appellant has not met her burden of proof to establish that she established a recurrence of disability due to her accepted injury. The weight of the medical evidence supports the fact that appellant did not suffer residuals of her injury sufficient to prohibit her from working in her limited-duty assignment. Dr. Moore, an Office referral physician, indicated on April 23, 2003 that he did not feel that appellant's work-related conditions were still active, and that she could return to her preinjury position. Dr. Dennis, appellant's treating physician, disagreed, and indicated that appellant continued to experience residuals from the work-related injury and that it was unlikely that appellant could return to her regular position.

In order to resolve the conflict between the two physicians, the Office referred appellant to Dr. Steiman for an impartial medical examination. Dr. Steiman, after examining appellant and thoroughly evaluating the medical evidence, appellant's history and pain assessment, agreed with Dr. Moore's opinion that appellant no longer had residuals from her work injury. Dr. Steiman

¹ *Wilfredo Carrillo*, 50 ECAB 99 (1998).

² *Leanne E. Maynard*, 43 ECAB 482 (1992).

indicated that the surgery performed by Dr. Zerick was not medically necessary and was not related to the events of December 2, 2002. He explained that what Dr. Zerick interpreted as a large disc herniation at C5-5 was, in fact, a unciniate spur. He noted that appellant's current complaints were due to the surgical procedure performed by Dr. Zerick, not the work-related injury. Dr. Steiman noted that appellant's pain analysis indicated that appellant had moderate total pain, but that his score also indicated concerns about appellant's motivation to improve. Dr. Steiman concluded that appellant could return to her former position without restrictions and required no further physical treatment with regard to the events of December 2, 2002. Dr. Steiman noted that his opinion was within a reasonable medical certainty. As this well-reasoned opinion of the impartial medical examiner is entitled to special weight, the Board finds that the medical evidence does not establish that appellant had a recurrence of disability due to her work-related injury on or after April 25, 2003. The Board further finds that there is no evidence that appellant has any physical reason related to her work accident that causes her to be unable to work in her limited-duty position. Appellant submitted no evidence indicating a change in the duties of her limited-duty assignment. Finally, although Dr. Lee opined that appellant had an emotional condition causally related to her work accident, the Board finds that he failed to provide supporting rationale to prove that this was not related to a preexisting condition.

CONCLUSION

The Board finds that the Office properly determined that appellant did not sustain a recurrence of disability causally related to her accepted injury of December 2, 2002 on or after April 25, 2003.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 18, August 12 and June 23, 2003 be affirmed.

Issued: November 29, 2004
Washington, DC

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member