

January 15, 2002. Appellant listed the nature of her injury as numbness of her entire left arm, spasms of the neck and left arm and tingling of the left hand. Appellant stopped work on January 29, 2002.

In a January 24, 2002 report, Dr. Steven R. Seals, an employing establishment physician who is Board-certified in preventive medicine and in occupational medicine, stated that appellant had the onset of neck and left arm pain and left hand tingling about January 31, 2001 when she carried boxes of files and moved printers during a change of office furniture, and that these symptoms were the same as those in an October 2000 incident. Dr. Seals diagnosed left shoulder strain and exacerbation of chronic pain. In a March 25, 2002 report, Dr. Tonya R. Rutledge, an internist, diagnosed radiculopathy, intervertebral disc displacement and myelopathy. X-rays of appellant's cervical spine on January 31, 2002 showed minimal narrowing at C6.

The Office accepted that appellant sustained a left shoulder strain and aggravation of a cervical strain and began payment of compensation for temporary total disability on January 29, 2002.

In a May 20, 2002 report, Dr. Cynthia Z. Africk, a Board-certified neurosurgeon, set forth a history that appellant's left shoulder and arm pain and her left hand numbness and tingling began on October 3, 2000 when she fell,¹ then flared up again on December 31, 2001 when she was moving some furniture. Dr. Africk noted that a January 2001 magnetic resonance imaging (MRI) scan showed a herniated disc that was fairly lateral at C5-6² and diagnosed C6 radicular syndrome with herniated disc on an old MRI scan. Upon Dr. Africk's recommendation, another MRI scan was done on June 9, 2002; as interpreted by Dr. Larry Hall, a Board-certified radiologist, it showed a small to moderate broad-based posterior disc protrusion and end plate spur at C5-6 with mild central cord compression and mild to moderate left foraminal narrowing and mild right foraminal narrowing. In a July 1, 2002 report, Dr. Africk noted that appellant had developed some right shoulder pain and right hand tingling, diagnosed C6 radicular syndrome and herniated disc at C5-6 and recommended a cervical discectomy and fusion at C5-6.

On August 16, 2002 the Office referred appellant, prior medical reports and a statement of accepted facts to Dr. Rudolf Hofmann, a Board-certified orthopedic surgeon, for a second opinion on her condition and its relationship to her work activities from December 31, 2001 to January 15, 2002. The Office advised Dr. Hofmann that appellant's claim for an October 2000 neck injury at work was disallowed based on a lack of probative medical evidence. In an August 30, 2002 report, Dr. Hofmann described appellant's October 3, 2000 fall in which she struck her left shoulder on the wall or a shredder, stating that appellant felt something pop at the base of her neck and experienced a burning pain at the base of her neck radiating to both shoulders and the left arm, with numbness in the left arm about a month later, and tingling in the left arm and hand by early 2001, symptoms that never completely subsided. Dr. Hofmann stated that appellant experienced increased pain at the base of her neck radiating to her left upper

¹ Dr. Africk inadvertently listed this date incorrectly as October 3, 2002.

² Dr. Gregory A. MacNealy, a Board-certified radiologist, interpreted the January 10, 2001 MRI scan to show, at C6, central to left lateral broad-based posterior disc protrusion with mild ventral cord impingement and probable left C6 nerve root impingement within the neural foramen.

extremity with numbness and tingling when moving furniture and files on December 31, 2001. Examination revealed complaints of tenderness over the spinous processes of the lower cervical spine extending to both trapezius areas, no tenderness over any aspect of the left upper extremity, a full and painless range of motion of the left shoulder, bilaterally equal grip strength, 4/5 pinch strength on the left compared to 5/5 on the right, bilaterally equal biceps and triceps tendon reflexes, a relative sensory deficit to slight touch over the palmar aspect of the left thenar eminence, no other area of a sensory deficit to slight touch involving any aspect of either upper extremity and no indication of myelopathy on neurologic examination. After describing appellant's symptoms and reviewing her medical records, Dr. Hofmann diagnosed degenerative disc disease at C5-6 with posterior protrusion of the disc causing a mild cord compression and left C6 radicular symptoms of radiating pain, numbness and tingling, and stated that the surgery proposed by Dr. Africk was appropriate to treat this condition. Dr. Hofmann concluded:

"I find no evidence of any substantive change of the preexisting cervical pathology subsequent to the activities after December 31, 2001 on the diagnostic films (MRI and x-ray) that the work activities from December 31, 2001 to January 15, 2002 as described in the statement of accepted facts which negatively impacted the underlying condition in any way. There is evidence in the history that the claimant's underlying condition worsened independently of work. It has recently worsened again at a time when she had been off work for several months. (She now has tingling in the right hand also.)

"Cervical degenerative disc disease tends to be a progressive condition which may stabilize temporarily or permanently at some point in time. There is no *objective* indication that [appellant's] condition progressed or was aggravated from December 2001 to February 2002 due to any injury during this time." (Emphasis in the original.)

In response to an Office request for a supplemental report addressing appellant's soft tissue injury, Dr. Hofmann stated in a November 12, 2002 report that he did not find any objective evidence to support the accepted conditions of aggravation of cervical strain and left shoulder strain when he examined her on August 30, 2002 and that it was his opinion that her symptoms at the time he examined her were due to preexisting C5-6 cervical degenerative disc disease, with no objective evidence of any aggravation of this condition. In a January 17, 2003 report, Dr. Marlon D. Twyman, a Board-certified family practitioner, noted that appellant was no longer in physical therapy due to no results, reported left shoulder tenderness on palpation and neck tenderness on range of motion and palpation and diagnosed cervical strain and left shoulder pain.

On March 14, 2003 the Office referred appellant, the case record and a statement of accepted facts to Dr. Ronald Moser, a Board-certified orthopedic surgeon, to resolve a conflict of medical opinion. In a report dated April 7, 2003, Dr. Moser noted appellant's complaints of discomfort of the neck and arm, and numbness and tingling of the whole left arm. On examination of appellant's left shoulder, he found a full range of motion, no tenderness and no atrophy. On examination of appellant's neck, Dr. Moser found a full range of motion with great discomfort at the extremes, tenderness and brisk reflexes. He diagnosed resolved shoulder strain, resolved cervical strain and degenerative disc disease by history and MRI scan. Dr. Moser stated

that he did not find any evidence on the diagnostic films of substantive changes to her preexisting cervical pathology subsequent to her activities after December 31, 2001, that he felt the work activities described in the statement of accepted facts “did impact the underlying condition and that they did exacerbate the current symptoms,” and that the symptoms had persisted beyond the normal period one would expect for a sprain or a strain. Dr. Moser stated that the aggravation of her underlying pathology that appellant experienced had resolved and that he based this opinion on the fact that his physical examination did not demonstrate any objective evidence that would document the presence of a cervical strain or of a shoulder strain.

On May 20, 2003 the Office issued a notice of proposed termination of compensation, on the basis that appellant no longer had residuals of her December 31, 2001 employment injury. In a July 25, 2003 report, Dr. Twyman noted appellant’s complaints of more muscle spasms across the shoulders and tingling down both arms, reported findings of neck tenderness on range of motion and palpation, tenderness to the mid-scapular area and reduced range of motion of the neck, and diagnosed cervical strain. By decision dated October 6, 2003, the Office terminated appellant’s compensation, including medical benefits, effective September 30, 2003, on the basis that she no longer had residuals of her December 31, 2001 employment injury.

Appellant requested a hearing, which was held on June 15, 2004. Appellant testified that she still had symptoms, though not as bad, of her October 2000 injury at the time of her December 31, 2001 injury, but that she had stopped treatment about three months before this injury. Appellant submitted a May 22, 2004 report from Dr. James R. Bennion, the employing establishment’s occupational medicine flight commander, who noted that Dr. Twyman’s reports showed she had reached maximum medical improvement, but that he would not recommend she return to work without a neurosurgical opinion.

By decision dated August 10, 2004, an Office hearing representative found that the Office met its burden to justify termination of appellant’s compensation. The hearing representative found that Dr. Hofmann’s reports constituted the weight of the medical evidence on the issue of whether the herniated cervical disc and need for surgery were causally related to appellant’s work activities during the first two weeks of January 2002, and that there was no conflict of medical opinion at the time of the referral to Dr. Moser, but noted that this doctor also negated causal relationship between the need for surgery and appellant’s work activities in the first two weeks of January 2002.

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. 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.³ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.⁴ To terminate authorization for medical treatment, the Office must

³ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

⁴ *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

establish that appellant no longer has residuals of an employment-related condition which require further treatment.⁵

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.⁶

ANALYSIS

The Office accepted that appellant sustained a left shoulder strain and aggravation of a cervical strain in the performance of her duties from December 31, 2001 to January 15, 2002, and paid appellant compensation for temporary total disability beginning January 29, 2002. The Office referred appellant to Dr. Hofmann, a Board-certified orthopedic surgeon, for a second opinion on her condition and its relationship to her work activities from December 31, 2001 to January 15, 2002. Based on his August 20, 2002 examination and his review of her medical records including diagnostic studies, Dr. Hofmann concluded in a November 12, 2002 report that the accepted conditions were no longer manifest when he examined her, and that her symptoms were due to her preexisting cervical degenerative disc disease.

Based on his January 17, 2003 examination of appellant, Dr. Twyman, a Board-certified family practitioner, concluded that appellant still had a cervical strain. The Board finds there thus was a conflict of medical opinion between Drs. Twyman and Hofmann over whether appellant's accepted cervical strain had resolved.⁷ Dr. Moser, a Board-certified orthopedic surgeon, resolved this conflict in an April 7, 2003 report by concluding that the accepted conditions of shoulder strain and cervical strain had resolved, and explaining that the symptoms had persisted beyond the normal period one would expect for a sprain or strain, and that his physical examination did not demonstrate any objective evidence to document the presence of these conditions. The Board finds that the report of Dr. Moser, an impartial medical specialist resolving a conflict of medical opinion, was based on a proper factual background and sufficiently well rationalized to be given special weight on the issue of whether the accepted conditions of shoulder strain and cervical strain had resolved.

On the issue of whether appellant's work activities from December 31, 2001 to January 15, 2002 aggravated her cervical degenerative disc disease or caused or aggravated her herniated disc at C5-6, the Board finds there was no conflict of medical opinion. Dr. Seals diagnosed only left shoulder strain and exacerbation of chronic pain, and Dr. Twyman diagnosed only cervical strain and left shoulder pain. Dr. Rutledge offered no opinion on whether the conditions she diagnosed -- radiculopathy, intervertebral disc displacement and myelopathy -- were in any way related to appellant's employment. Dr. Africk also did not offer an opinion on

⁵ *Furman G. Peake*, 41 ECAB 361 (1990).

⁶ *James P. Roberts*, 31 ECAB 1010 (1980).

⁷ 5 U.S.C. § 8123(a) states in pertinent part, "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."

whether the conditions she diagnosed -- C6 radicular syndrome and the herniated disc at C5-6 -- were related to appellant's employment.

The only medical reports addressing the possible relationship between appellant's cervical degenerative disc disease or her herniated cervical disc and her employment are those from Drs. Hofmann and Moser, and both these Board-certified orthopedic surgeons concluded that there was no such relationship. Dr. Hofmann's review of the MRI scans before and after the December 31, 2001 to January 15, 2002 work activities revealed no evidence of any substantive change in the preexisting cervical pathology, and her presentation of a new symptom of right hand tingling after she stopped work led him to conclude that her underlying condition worsened independently of work. Similarly, Dr. Moser stated that he did not find any evidence on the diagnostic films of substantive changes to her preexisting pathology subsequent to her work activities after December 31, 2001. The Board finds that the medical evidence does not establish that appellant's work activities during this period aggravated her cervical degenerative disc disease or caused or aggravated her herniated disc at C5-6.⁸

CONCLUSION

The Board finds that the weight of the medical evidence establishes that appellant no longer had residuals of her December 31, 2001 employment injury by September 30, 2003. The Board finds that the medical evidence does not establish that appellant's work activities during this period aggravated her cervical degenerative disc disease or caused or aggravated her herniated disc at C5-6.

⁸ As these conditions were not accepted by the Office, appellant retained the burden of proving that they were related to her employment. *Melvina Jackson*, 38 ECAB 443 (1987).

ORDER

IT IS HEREBY ORDERED THAT the September 3, 2004 and October 6, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 5, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member