

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

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**PHYLLIS A. SAMS, Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Pittsburgh, PA, Employer**

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**Docket No. 05-640  
Issued: August 2, 2005**

*Appearances:*  
*Phyllis A. Sams, 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  
DAVID S. GERSON, Judge

**JURISDICTION**

On January 21, 2005 appellant filed a timely appeal from a November 24, 2004 decision of a hearing representative of the Office of Workers' Compensation Programs that affirmed a June 22, 2004 Office decision terminating her compensation benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the case.

**ISSUES**

The issues are: (1) whether the Office met its burden of proof to justify termination of appellant's benefits effective June 22, 2004; and (2) whether appellant established that she had any continuing employment-related disability or condition after June 22, 2004.

**FACTUAL HISTORY**

On November 17, 1998 appellant, then a 48-year-old mail processor filed an occupational disease claim alleging that she developed a herniated disc as a result of performing her mail

processor duties.<sup>1</sup> Appellant became aware of her condition on September 10, 1998. The Office accepted the claim for low back strain and lumbar disc displacement and paid appropriate compensation. Appellant did not stop work.

Appellant came under the care of Dr. Crystl Willison, a Board-certified orthopedist, who noted treating appellant since January 7, 1999. In her reports dated January 7 to March 16, 1999, Dr. Willison noted a history of appellant's work injury and diagnosed multilevel lumbar disc degeneration with associated acute herniation at L2-3 and advised that appellant could work subject to various restrictions. Dr. Willison noted that a magnetic resonance imaging (MRI) scan dated November 5, 1998 revealed a moderate right paracentral disc herniation at L2-3, degeneration of the disc at L2-3, a central disc bulging and disc degeneration at L3-4 and L4-5. On March 23, 1999 she advised that appellant continued to complain of low back pain and noted that physical therapy was only minimally successful. Dr. Willison diagnosed herniated lumbar disc with radiculopathy.

Appellant filed several notices of recurrence of disability occurring on March 9, April 17, September 3 and 13, 1999, and June 24, 2000. The Office accepted the recurrences as work related.

Appellant continued to submit reports from Dr. Willison, who on August 4, 2000 noted that she continued to treat appellant conservatively for flare-ups of back pain in hopes of avoiding surgical intervention. In a report dated September 12, 2000, the physician noted appellant's increasing symptoms of back pain and diagnosed lumbosacral disc displacement, radiculopathy and herniated nucleus pulposus. Dr. Willison recommended that appellant continue to work with restrictions and undergo physical therapy. In a report dated January 4, 2001, Dr. Willison advised that she was leaving her medical practice and referred appellant to Dr. H. Paul Lewis, a Board-certified neurosurgeon. In an attending physician's report dated December 12, 2001, Dr. Lewis diagnosed herniated lumbar disc and noted with a check mark "yes" that appellant's condition was caused or aggravated by an employment activity. He advised that appellant reached maximum medical improvement and could continue to work limited duty. Dr. Lewis noted that appellant could work 16 consecutive hours with a day off, 40 per week, no overtime, no pulling, pushing or carrying greater than 10 pounds, no bending, standing and walking periodically, and advised that she must use a straight back chair. On June 26, 2002 Dr. Lewis diagnosed lumbosacral disc displacement with radiculopathy and recommended an MRI scan. The MRI scan of the lumbar spine dated August 18, 2002 revealed moderate central spinal stenosis at L3-4 with mild diffuse disc protrusion, mild central spinal stenosis at L2-3 with mild diffuse disc protrusion, and mild central spinal stenosis at L4-5 with mild diffuse disc protrusion.

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<sup>1</sup> Appellant filed a separate traumatic injury claim for a pulled back muscle which occurred on November 12, 1998, claim number 09-0446907. The Office denied appellant's claim and appellant appealed the case to the Board. In a decision dated October 11, 2001, the Board affirmed the Office's decisions dated March 1 and September 7, 2000 which denied merit review. The Board noted that the Office consolidated the traumatic injury claim (09-0446907) and the occupational disease claim currently before the Board (09-0446908). The Board advised that appellant only appealed the traumatic injury claim and therefore did not rule on the occupational disease claim. Docket No. 01-245 (issued October 11, 2001).

On January 20, 2003 the Office referred appellant to Dr. Richard T. Sheridan, a Board-certified orthopedist, for a second opinion evaluation. In a report date February 3, 2003, Dr. Sheridan discussed appellant's work history. He noted an essentially normal physical examination. Dr. Sheridan advised that appellant did not have residuals of her accepted work-related condition of low back strain. He noted findings of symptom magnification complex including complaints of pain to superficial palpation in diffuse areas of the lumbar spine. Dr. Sheridan opined that appellant could return to her regular position without restrictions.

The Office found that a conflict of medical opinion existed between Dr. Willison, appellant's treating physician, who indicated that appellant sustained residuals of her work-related low back strain and could work limited duty subject to various restrictions, and Dr. Sheridan, an Office referral physician, who determined that appellant did not have residuals of her accepted back strain and opined that appellant could return to work without restriction.

To resolve the conflict the Office referred appellant to a referee physician, Dr. Arthur F. Lee, a Board-certified orthopedic surgeon, who indicated, in a report dated October 16, 2003,<sup>2</sup> that he reviewed the records provided to him and performed a physical examination of appellant. He noted a history of appellant's work-related injury. The physician noted an essentially normal physical examination. Dr. Lee indicated that there was nothing on evaluation that would indicate that appellant had a permanent injury involving her low back and advised that she would have recovered from the injury in one to three months. He noted that appellant failed to demonstrate any sort of ongoing muscular, ligamentous, neurologic or pathology from an objective standpoint. Dr. Lee further noted that on examination there was no evidence whatsoever that appellant had radiculopathy or that her reported herniated disc had any clinical significance. He noted that disc herniations were only significant in patients over 40 if there is a very focal specific neurologic complex of findings that would indicate radiculopathy and this was not the case for appellant. He opined that appellant reached maximum medical improvement and would require no further treatment due to her work-related injury. In a January 4, 2004 report, Dr. Lee noted reviewing the medical record and indicated that the positive findings on the MRI scan of August 19, 2002 were simply manifestations of aging and were not in any way related to the reported work-related injury. Dr. Lee noted that there was no objective indication that appellant altered or change the natural history of her low back due to the events of September 1998, and at no time did appellant demonstrate acute findings of radiculitis nor did she have an electromyography that indicated acute neurologic injury. He concluded that appellant developed mechanical low back pain from lifting at the workplace in September 1998 and had completely recovered from this muscular injury and had no signs of any permanent injury. Dr. Lee noted that appellant could return to regular duty and no restrictions or limitations.

On April 24, 2004 the employing establishment offered appellant a modified full-time position as a mail processor. Appellant accepted the position and returned to work.

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<sup>2</sup> Dr. Lee advised that this was the "first portion" of his independent medical examination in which he discussed the history reported by appellant, examination findings, and x-ray findings. Dr. Lee indicated that he would subsequently conduct a "second portion" of his examination that would involve a review of appellant's extensive medical records that would also take into consideration his examination findings. As noted in the text, Dr. Lee later issued a January 4, 2004 report which represented the second portion of his examination.

On May 11, 2004 the Office issued a notice of proposed termination of all compensation benefits on the grounds that Dr. Lee's reports dated October 16, 2003 and January 4, 2004 established no residuals of the work-related employment injury.

Appellant submitted an MRI scan of the lumbar spine dated August 18, 2002 which revealed moderate central spinal stenosis at L3-4 with mild diffuse disc protrusion, mild central spinal stenosis at L2-3 with mild diffuse disc protrusion, and mild central spinal stenosis at L4-5 with mild diffuse disc protrusion. Also submitted was a report from Dr. Lewis dated May 19, 2004 which diagnosed lumbosacral disc displacement with radiculopathy. Appellant reported that she was referred to two physicians and examined for about five minutes and after performing a test where she bent over to touch her toes, she was returned to work. The physician noted that appellant came in for medication.

By decision dated June 22, 2004, the Office terminated appellant's compensation and medical benefits effective the same day on the grounds that the weight of the medical evidence established that appellant had no continuing disability resulting from her accepted employment injury.

On August 20, 2004 appellant requested a review of the written record. Appellant disagreed with the Office's decision and noted that Drs. Sheridan and Lee spent only 15 minutes with her and she could not perform any of the tests on examination. She noted that her physical impairment limited her major life activities. Appellant submitted a letter from Dr. Lewis dated April 14, 2004, who noted that appellant was currently under his care for lumbar disc disease. He advised that appellant had reached maximum medical improvement but was presently disabled. Dr. Lewis noted that her work-related restrictions were permanent.

In a decision dated November 24, 2004, the hearing representative affirmed the Office decision dated June 22, 2004.

### **LEGAL PRECEDENT -- ISSUE 1**

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>3</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>4</sup>

### **ANALYSIS -- ISSUE 1**

The Office accepted appellant's claim for low back strain and lumbar disc displacement. The Office reviewed the medical evidence and determined that a conflict in medical opinion existed between appellant's attending physician, Dr. Willison, a Board-certified orthopedist, who disagreed with the Office referral physician, Dr. Sheridan, a Board-certified orthopedist,

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<sup>3</sup> *Gewin C. Hawkins*, 52 ECAB 242 (2001); *Alice J. Tysinger*, 51 ECAB 638 (2000).

<sup>4</sup> *Mary A. Lowe*, 52 ECAB 223 (2001).

concerning whether appellant had any continuing work-related condition. Consequently, the Office referred appellant to Dr. Lee to resolve the conflict.

The Board finds that, under the circumstances of this case, the opinion of Dr. Lee is sufficiently well-rationalized and based upon a proper factual background such that it is entitled to special weight and establishes that appellant's work-related condition has ceased.

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>

In his report of October 16, 2003, Dr. Lee reviewed appellant's history, reported findings and noted that appellant exhibited no objective complaints or definite abnormality in her condition. He opined that, based on a review of the medical records, the overall diagnosis, appellant would have recovered in one to three months and would have been capable of resuming all of her work activities without restrictions. Dr. Lee noted that appellant failed to demonstrate any sort of ongoing muscular, ligamentous or neurologic pathology from an objective standpoint which would indicate that appellant has a permanent injury to her low back that would require any sort of restrictions or limitations at the workplace. In his January 4, 2004 report, Dr. Lee indicated that, although appellant had positive findings on her MRI scan, these were simply manifestations of aging and were not in any way related to the reported work-related injury. He concluded that appellant developed mechanical low back pain from lifting at the workplace in September 1998 and has completely recovered from this muscular injury. Dr. Lee noted that appellant had no signs of any permanent injury and could return to regular duty with no restrictions or limitations and would require no further treatment due to her work-related injury.

After issuance of the pretermination notice, appellant submitted an MRI scan of the lumbar spine dated August 18, 2002 which revealed moderate central spinal stenosis at L3-4 with mild diffuse disc protrusion, mild central spinal stenosis at L2-3 with mild diffuse disc protrusion, and mild central spinal stenosis at L4-5 with mild diffuse disc protrusion. However, this report neither provided a history of injury or a rationalized opinion addressing how any continuing condition was causally related to the September 10, 1998 injury.<sup>6</sup> Also submitted was a report from Dr. Lewis dated May 19, 2004 who diagnosed lumbosacral disc displacement with radiculopathy. He noted that appellant came in for medication and a disability slip. However, Dr. Lewis did not specifically address how any continuing condition or medical restrictions were causally related to the accepted September 10, 1998 employment injury. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative

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<sup>5</sup> *Solomon Polen*, 51 ECAB 341 (2000).

<sup>6</sup> *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

value.<sup>7</sup> Additionally, Dr. Lewis' report is similar to his prior reports and are insufficient to overcome that of Dr. Lee or to create a new medical conflict.<sup>8</sup>

The Board finds that Dr. Lee had full knowledge of the relevant facts and evaluated the course of appellant's condition. He is a specialist in the appropriate field. At the time benefits were terminated he clearly opined that appellant had absolutely no work-related reason for disability. His opinion as set forth in his reports of October 16, 2003 and January 4, 2004 are found to be probative evidence and reliable. The Board finds that Dr. Lee's opinion constitutes the weight of the medical evidence and is sufficient to justify the Office's termination of benefits.<sup>9</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

If the Office meets its burden of proof to terminate appellant's compensation benefits, the burden shifts to appellant to establish that she had continuing disability causally related to her accepted employment injury.<sup>10</sup> To establish a causal relationship between the condition, as well as any disability claimed and the employment injury, the employee must submit rationalized medical opinion evidence, based on a complete factual background, supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>11</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that appellant has not established that she has any continuing residuals of her low back strain and lumbar disc displacement causally related to her accepted employment injuries on or after June 22, 2004. Appellant submitted a report from Dr. Lewis dated April 14, 2004, who noted that appellant was currently under his care for lumbar disc disease. He advised that appellant reached maximum medical improvement; however, was currently disabled.

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<sup>7</sup> *Id.*

<sup>8</sup> See *Michael Hughes*, 52 ECAB 387 (2001); *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990). The Board notes that Dr. Lewis' report does not contain new findings or rationale upon which a new conflict might be based.

<sup>9</sup> In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

<sup>10</sup> *Manuel Gill*, 52 ECAB 282 (2001); *George Servetas*, 43 ECAB 424, 430 (1992).

<sup>11</sup> See *Connie Johns*, 44 ECAB 560 (1993); *James Mack*, 43 ECAB 321 (1991).

Dr. Lewis noted that her work-related restrictions were permanent. The Board finds that Dr. Lewis did not provide a rationalized opinion specifically addressing how any continuing condition or medical restrictions were causally related to the accepted September 1998 employment injury. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.<sup>12</sup> Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.<sup>13</sup> Therefore, the report from Dr. Lewis is insufficient to overcome that of Dr. Lee or to create a new medical conflict.<sup>14</sup>

None of the reports submitted by appellant after the termination of benefits included a rationalized opinion regarding the causal relationship between her current condition and her accepted work-related injury of September 1998.<sup>15</sup> The Board has found that vague and unrationalized medical opinion on causal relationship have little probative value. Therefore, the report from Dr. Lewis is insufficient to overcome that of Dr. Lee or to create a new medical conflict.<sup>16</sup>

### CONCLUSION

The Board finds that the Office has met its burden of proof to terminate benefits effective June 22, 2004. The Board further finds that appellant failed to establish that she had any continuing disability after June 22, 2004.

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<sup>12</sup> See *Jimmie H. Duckett*, *supra* note 6.

<sup>13</sup> *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).

<sup>14</sup> *Howard Y. Miyashiro*, *supra* note 8; *Dorothy Sidwell*, *supra* note 8. The Board notes that Dr. Lewis' report does not contain new findings or rationale upon which a new conflict might be based.

<sup>15</sup> *Id.*

<sup>16</sup> See *Howard Y. Miyashiro*, *supra* note 8; *Dorothy Sidwell*, *supra* note 8.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Worker's Compensation Programs dated November 24, 2004 is affirmed.

Issued: August 2, 2005  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board