

performing her regular duties then stopped work on April 26, 2001.¹ The Office accepted that she sustained a cervical strain/sprain due the clerical duties she performed while working at her desk.²

Beginning in March 2001, appellant received treatment for her condition from Dr. James A. Sepiol, an attending Board-certified orthopedic surgeon, who completed numerous form reports dated through late 2001 to early 2002 indicating that appellant had a cervical strain/sprain and that she was totally disabled from work.

The Office referred appellant to Dr. Jerrold M. Sherman, a Board-certified orthopedic surgeon, for additional evaluation of her medical condition. In a report dated February 12, 2002, Dr. Sherman stated that on examination appellant exhibited some limited neck motion but normal pain-free upper extremity motion. He diagnosed “cervical strain with complaints of neck strain but no neurological deficit.” Dr. Sherman concluded that appellant’s neck problems were due to her age and nonwork-related osteoarthritis and were not due to her accepted employment injury.³

The Office determined that there was a conflict in the medical evidence regarding the nature of appellant’s neck condition and referred her to Dr. Harry A Khasigian, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on the matter.

In a report dated September 4, 2002, Dr. Khasigian stated that appellant reported experiencing pain upon moving her neck and noted that diagnostic testing showed degenerative cervical disc disease between C2 and C7 without acute disc herniation or nerve root irritation. He diagnosed cervical spondylosis, moderate to severe at C4-5 and C5-6, associated with degenerative disc disease.⁴ Dr. Khasigian stated that appellant’s nonwork-related degenerative disc disease was long-standing and that her employment-related cervical strain/sprain constituted a relatively minor injury and would have long since resolved itself. He completed a form report recommending work restrictions and noted that these restrictions were necessitated by the natural progression of her nonwork-related degenerative disc disease.⁵

In form reports dated December 5, 2002 and March 13, 2003, Dr. Sepiol diagnosed cervical sprain/strain, “accident, overexertion/strenuous movement,” and carpal tunnel syndrome and indicated that appellant was totally disabled.

¹ Appellant asserted that she hit the top of her head on a sign while attending an employing establishment “transportation meeting” in Los Angeles on January 27, 1999. Appellant did not file a claim in 1999 regarding this alleged incident and the employing establishment asserted that appellant was off the clock at the time.

² The Office did not accept that appellant sustained an employment injury on January 27, 1999.

³ He completed a form providing work restrictions which were not necessitated by an employment-related condition. Dr. Sepiol produced a June 20, 2002 report indicating that he disagreed with Dr. Sherman’s opinion.

⁴ Dr. Khasigian also diagnosed bilateral carpal tunnel syndrome. It appears that a separate Office claim was filed for this condition and the matter is not currently before the Board.

⁵ He also noted that appellant’s degenerative process preceded her January 1999 accident.

By decision dated April 16, 2003, the Office terminated appellant's entitlement to disability compensation and medical benefits due to her employment-related cervical strain/sprain.⁶ It determined the weight of the medical evidence rested with the opinion of the impartial medical specialist, Dr. Khasigian, who found that appellant no longer had residuals of her employment-related cervical strain/sprain.

Appellant asserted that she had continuing residuals of her accepted employment-related cervical strain/sprain after September 4, 2002.⁷ She submitted a May 18, 2003 report in which Dr. Sepiol noted that she had two employment-related injuries and stated, "The first is a neck injury that she sustained as a result of accumulative trauma and an acute event that occurred while working for the [employing establishment]." He indicated that he disagreed with the opinions of Dr. Sherman and Dr. Khasigian.

In form reports dated August 7, 2003, January 15 and March 4, 2004, Dr. Sepiol "accident, overexertion/strenuous movement," and carpal tunnel syndrome and indicated that appellant was totally disabled.

In a report dated September 14, 2003, Dr. Sepiol indicated that he disagreed with the termination of appellant's compensation. He stated that he had been to appellant's workplace and felt that "the cramped, ergonomically poor office space that utilized as her work site certainly is responsible for her continued cervical disc injuries and problems."

By decision dated February 9, 2005, the Office affirmed its April 16, 2003 decision, finding that the weight of the medical evidence properly rested with the opinion of Dr. Khasigian regarding whether appellant had residuals of her accepted employment-related cervical strain/sprain after September 4, 2002. The Office also found that the medical evidence appellant submitted did not show that she had continuing residuals of her employment-related cervical strain/sprain after September 4, 2002.

LEGAL PRECEDENT

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.⁸ The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment.⁹ After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence

⁶ It appears that the termination was effective September 4, 2002, *i.e.*, the date of Dr. Khasigian's report. Appellant had been using sick and annual leave to cover her work stoppage for a period and then applied for leave buyback and for disability compensation for various periods.

⁷ Appellant retired from the employing establishment effective January 2003.

⁸ *Charles E. Minniss*, 40 ECAB 708, 716 (1989); *Vivien L. Minor*, 37 ECAB 541, 546 (1986).

⁹ *Id.*

that he or she had an employment-related disability which continued after termination of compensation benefits.¹⁰

In situations where there exist 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 upon a proper factual background, must be given special weight.¹¹

ANALYSIS

The Office accepted that appellant sustained an employment-related cervical strain/sprain. It determined that there was a conflict in the medical opinion between Dr. Sepiol, her attending Board-certified orthopedic surgeon, and Dr. Sherman, a Board-certified orthopedic surgeon acting as an Office referral physician, on the issue of whether she continued to have residuals of her employment injury. In order to resolve the conflict, the Office properly referred appellant, pursuant to section 8123(a) of the Act, to Dr. Khasigian, a Board-certified orthopedic surgeon, for an impartial medical examination and an opinion on the matter.¹²

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Khasigian, the impartial medical specialist selected to resolve the conflict in the medical opinion. The report of Dr. Khasigian establishes that appellant had no residuals of her cervical strain/sprain after September 4, 2002.

The Board has carefully reviewed the opinion of Dr. Khasigian and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of the present case. Dr. Khasigian's opinion is based on a proper factual and medical history in that he had the benefit of an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence.¹³ Dr. Khasigian provided medical rationale for his opinion by explaining that appellant's nonwork-related degenerative disc disease was long-standing and that her employment-related cervical strain/sprain constituted a relatively minor injury and would have long since resolved itself. He noted appellant's work restrictions were necessitated by the natural progression of her nonwork-related degenerative disc disease.

After the Office's April 16, 2003 decision terminating appellant's compensation effective September 4, 2002, appellant submitted additional medical evidence which she felt showed that she was entitled to compensation after September 4, 2002 due to residuals of her employment-related cervical strain/sprain. Given that the Board has found that the Office properly relied on

¹⁰ *Wentworth M. Murray*, 7 ECAB 570, 572 (1955).

¹¹ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

¹² Section 8123(a) of the Act provides 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." 5 U.S.C. § 8123(a).

¹³ *See Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

the opinion of the impartial medical examiner, Dr. Khasigian, in terminating appellant's compensation effective September 4, 2002, the burden shifts to appellant to establish that she is entitled to compensation after that date. The Board has reviewed the additional evidence submitted by appellant and notes that it is not of sufficient probative value to establish that she had residuals of her employment injury after September 4, 2002.

Appellant submitted a May 18, 2003 report in which Dr. Sepiol noted that she had two employment-related injuries and stated, "The first is a neck injury that she sustained as a result of accumulative trauma and an acute event that occurred while working for the [employing establishment]." In a report dated September 14, 2003, Dr. Sepiol indicated that he had been to appellant's workplace and felt that "the cramped, ergonomically poor office space that utilized as her work site certainly is responsible for her continued cervical disc injuries and problems." In form reports dated between December 2002 and March 2004, Dr. Sepiol diagnosed cervical sprain/strain and "accident, overexertion/strenuous movement" and indicated that appellant was totally disabled.¹⁴

In these reports, Dr. Sepiol suggested that appellant continued to have residuals of her employment-related cervical strain/sprain. These reports, however, are of limited probative value on the relevant issue of the present case in that Dr. Sepiol did not provide adequate medical rationale in support of his conclusion on causal relationship.¹⁵ He did not describe appellant's employment injury in any detail or explain how it could continue to cause residuals after September 4, 2002. In fact, Dr. Sepiol's reports do not contain any notable factual or medical history and are entirely devoid of any description of specific findings on examination.¹⁶ In his May 18, 2003 report, Dr. Sepiol suggested that a January 1999 accident contributed to appellant's disability, but the Office has not accepted that an employment injury occurred in January 1999. For these reasons, Dr. Sepiol's reports do not show that appellant had residuals of her accepted employment-related cervical strain/sprain after September 4, 2002 and she has not met her burden of proof in this regard.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she had residuals of her accepted employment-related cervical strain/sprain after September 4, 2002.

¹⁴ He also diagnosed carpal tunnel syndrome, but this condition is not the subject of the present appeal.

¹⁵ See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

¹⁶ See *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979) (finding that a medical opinion on causal relationship must be based on a complete and accurate factual and medical history).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' February 9, 2005 decision is affirmed.

Issued: September 8, 2005
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board