United States Department of Labor
Employees' Compensation Appeals Board

V.K., Appellant	)	
and	)	**Docket No. 06-827**
	)	**Issued: March 21, 2007**
U.S. POSTAL SERVICE, POST OFFICE, St. Charles, IL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On March 3, 2006 appellant filed a timely appeal of a January 19, 2006 merit decision of the Office of Workers' Compensation Programs which terminated her compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether the Office properly terminated appellant's compensation effective September 8, 2002 on the grounds that she no longer had any residuals or disability causally related to her employment-related cervical strain and subluxation at C5-6; and (2) whether she had any continuing employment-related residuals or disability after September 8, 2002.

FACTUAL HISTORY

On January 27, 1988 appellant, then a 32-year-old letter carrier, filed a traumatic injury claim alleging that on January 25, 1988 she sprained the right side of her neck when she reached

for a mailbox. The Office accepted her claim for cervical strain and subluxation at C5-6. It paid appropriate compensation.

By letter dated October 27, 2000, the Office advised appellant's representative that there was no current medical evidence in the file to establish her entitlement to continuing compensation benefits. It requested that she submit a current medical report from an attending physician addressing her residuals and disability. The Office also requested that the physician complete an accompanying work capacity evaluation (Form OWCP-5c), indicating whether appellant was able to return to work or participate in vocational rehabilitation.

Dr. Brian L. Tutor, an attending chiropractor, submitted an OWCP-5c form and narrative report on December 19, 2000. He stated that appellant continued to chronic subluxations at C5-6, chronic bilateral disabling thoracic outlet syndrome, chronic bilateral upper trapezious and periscapular myofasciitis as demonstrated by x-ray.[1] Dr. Tutor noted that appellant was totally disabled for work due to chronic disabling pain with acute exacerbation of her symptoms. He noted that she attempted to work part time and had undergone physical therapy which was not responsive and only worsened her condition. Dr. Tutor provided appellant's physical restrictions.

By letter dated February 16, 2001, the Office referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. Suresh Velagapudi, a Board-certified orthopedic surgeon, for a second opinion medical examination.

In a March 13, 2001 report, Dr. Velagapudi opined that the accepted work-related injuries had resolved. He explained that there were no objective findings of subluxation at C5-6 or of a continuing cervical strain. Appellant only had subjective complaints of neck and arm pain. Dr. Velagapudi stated that there were no objective reasons to establish work restrictions. He concluded that appellant's prognosis was good and that she did not require future medical treatment except for periodic use of analgesics. In an OWCP-5c form dated March 26, 2001, Dr. Velagpudi stated that appellant could work eight hours a day with no restrictions.

The Office found a conflict in the medical opinion evidence between Dr. Tutor and Dr. Velagapudi regarding whether appellant had continuing employment-related residuals or disability. By letter dated December 17, 2001, it referred appellant, together with a statement of accepted facts, the case record and a list of questions to be addressed, to Dr. James W. Milgram, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a January 30, 2002 report, Dr. Milgram provided a history of appellant's employment injury and medical treatment. He reported essentially normal findings on physical examination and reviewed appellant's medical records. Dr. Milgram noted that she was largely treated for subjective symptoms rather than any objective disease process that was verifiable by

[1] As Dr. Tutor diagnosed subluxation as demonstrated by x-ray, he is considered a physician under the Federal Employees' Compensation Act. *See* 5 U.S.C. § 8101(2). This subsection provides that chiropractors are considered physicians only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary.

examination or testing. He stated that, despite discussion about subluxation at C5-6, his review of x-rays taken over 15 years demonstrated a particular configuration of appellant's spine that was not abnormal but just the shape of her spine, not the result of any accident. Dr. Milgram noted that the disc at the involved level had maintained its height and water content and there was no evidence of subluxation or degeneration. Appellant never sustained a herniated disc and Dr. Milgram stated that her chiropractors overinterpreted her x-rays as a traumatic event which were a variation of normal and not the cause of any symptomatology. Dr. Milgram found no evidence of neurologic disease and stated that appellant did not have abnormal vascular, nerve or muscle changes as a result of an injury. He related that the diagnosis of thoracic outlet syndrome was not attenable and was not substantiated. Dr. Milgram stated, as follows:

> "It is my personal belief that [appellant] is alleging symptomatology that she does not have. I find no organic basis for persistent problems in the neck or upper extremities. [Appellant] may have indeed had a cervical sprain but she had nothing more serious than that and there is no neurologic involvement. Because of her persistent complaints she has received an exceptional amount of treatment from many different specialists. However, I am in full agreement with the findings of Dr. Velagapudi who examined [appellant] on March 13, 2001. I do not find that [she] has a disability caused by her employment with the [employing establishment and I also find no significant disease process that prevents [appellant] from performing regular employment."

Dr. Milgram further found that appellant sustained a cervical sprain but that this condition no longer persisted. She did not have any condition that required ongoing medical treatment despite her continuing complaints. Dr. Milgram concluded that he was suspicious about appellant's complaints as she did not suffer any objective dislocations of the sternoclavicular joint.

On May 14, 2002 Dr. Tutor submitted an OWCP-5c form dated April 29, 2002 which found that appellant was totally disabled due to constant pain with exacerbation on exertion. He listed her physical restrictions.

By letter dated August 2, 2002, the Office issued a notice of proposed termination of compensation based on the medical opinion of Dr. Milgram. It provided 30 days in which appellant could respond. Appellant did not respond within the allotted time period.

In a decision issued on September 4, 2002, the Office terminated appellant's compensation benefits effective September 8, 2002.

Appellant submitted treatment notes covering intermittent dates from January 16, 1998 through August 23, 2002 from her physical therapist and chiropractor whose signatures are illegible which addressed her symptoms related to her upper and lower extremities.

By letter dated August 14, 2003, appellant requested reconsideration. Dr. Tutor's July 24, 2003 report stated that appellant continued to suffer from chronic subluxation/fixation at C5-6 and C6-7 that was traumatically induced and chronic sprain and strain of the cervical region. He defined the term subluxation and noted that a March 25, 2003 magnetic resonance

imaging (MRI) scan performed by Dr. Kent R. Thielen, a Board-certified radiologist, demonstrated spondylotic changes at the C5-6 and C6-7 interspace levels, which indicated trauma to these areas. Dr. Tutor noted that appellant made many attempts to return to work that were unsuccessful due to increased pain and fatigue and inconsistency in her medical treatment. Narrative and laboratory reports covering the period February 12 through April 17, 2003, from Dr. Roger F.J. Shepherd, a Board-certified internist, Dr. John E. Ahlskog, a Board-certified neurologist, Dr. Jeffrey M. Thompson, a Board-certified physiatrist, and Madeline A. Bartels, a registered nurse, addressed the treatment of appellant's chronic neck, shoulder, upper back, upper and lower extremity and generalized muscle pain, sleep disturbance, fatigue and achiness. Dr. Shepherd diagnosed myofascial pain syndrome, fibromyalgia and fibrous dysplasia of the right fourth rib lesion. Dr. Ahlskog diagnosed probable fibromyalgia, paresthesias of the upper extremities, musculoskeletal neck and head pain, elevated alkaline phosphatase and fourth rib expansile lesion. Dr. Thompson found fibromyalgia, depression and nonrestorative sleep. Ms. Bartels diagnosed fibromyalgia.

By decision dated November 7, 2003, the Office denied modification of the September 4, 2002 decision finding that Dr. Milgram's medical opinion as an impartial medical specialist constituted the weight of the medical evidence.

On August 20, 2004 appellant requested reconsideration. In a July 9, 2004 report, Dr. Tutor reiterated his prior opinion that appellant's current cervical problems were caused by her accepted employment-related conditions, noting Dr. Thielen's March 25, 2003 MRI scan. Dr. Tutor stated that additional stress related to appellant's claim caused regression in the healing process of her employment injuries which prevented her from continuing with required treatments on an ongoing basis. In treatment notes dated March 5 and June 24, 2004, Dr. Henry Z.C. Echiverri, a Board-certified neurologist, provided a history of appellant's January 25, 1988 employment injury. He diagnosed chronic cervical strain and sprain with myofascial pain syndrome (fibromyalgia). Dr. Echiverri opined that the diagnosed conditions were a continuation of appellant's employment-related injuries.

In an August 26, 2004 decision, the Office denied modification of the November 7, 2003 decision. It found that Dr. Milgram's medical opinion as an impartial medical specialist was entitled to special weight.

In an August 19, 2005 letter, appellant, through her representative, requested reconsideration of the Office's August 26, 2004 decision. Dr. Echiverri's November 22, 2004 report stated that the status of appellant's myalgia and cervical and lumbar sprain/strain remained unchanged since her last examination. In a May 9, 2005 report, he diagnosed myalgia. Dr. Echiverri's August 16, 2005 report provided a review of appellant's medical records and his findings on physical examination. He opined that appellant sustained myofascial pain syndrome, fibromyalgia, thoracic outlet syndrome, tendinitis, depression and anxiety causally related to her accepted employment-related injuries. Dr. Echiverri stated that the employment-related cervical strain and sprain triggered the development of spasms in the paracervical muscles which caused the development of myofascial pain syndrome. He related that, once this condition set in, it was difficult to treat and it was prone to recurrent exacerbation and flare-up as these muscles were reinjured by even the simplest exertion. Dr. Echiverri further related that this would lead to a chronic condition that recruited nearby muscles to spasms and started a vicious cycle until the

involvement progressed from a regional involvement, *i.e.*, neck muscles, to a more generalized involvement until the whole body was practically in pain. He indicated that his diagnosis of myofascial pain syndrome was supported by his objective findings of spastic muscles with discreet reproducible trigger points that were more prominent in the cervical area. Dr. Echiverri stated that appellant's employment-related injuries caused a state of increased muscle tone and spasms in the cervical paraspinal muscles which squeezed nerves and vessels that traversed certain muscle groups such as those located in the supraclavicular and lateral angle of the neck which lead to thoracic outlet syndrome. He indicated that her tendinitis resulted from muscles that held a joint together and were in continual spasms which caused the joint to be more impacted together and to sustain greater wear and tear. Dr. Echiverri stated that appellant's chronic pain led to her reactive depression and anxiety over an unyielding and frustrating condition.

By decision dated January 19, 2006, the Office denied modification of the August 26, 2004 decision. It found that the evidence submitted was insufficient to outweigh the special weight accorded to Dr. Milgram's medical opinion as an impartial medical specialist.

LEGAL PRECEDENT -- ISSUE 1

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.[2] The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[3]

When 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.[4]

ANALYSIS -- ISSUE 1

The Board finds that the Office properly determined that there was a conflict in the medical opinion evidence between Dr. Tutor, an attending physician, and Dr. Velagapudi, an Office referral physician, as to whether appellant had any continuing residuals or disability causally related to her accepted cervical strain and subluxation at C5-6. Dr. Tutor opined that appellant continued to experience residuals and disability due to the accepted employment

[2] *Jason C. Armstrong*, 40 ECAB 907 (1989).

[3] *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

[4] *James F. Weikel*, 54 ECAB 660 (2003); *Beverly Grimes*, 54 ECAB 543 (2003); *Sharyn D. Bannick*, 54 ECAB 537 (2003); *Daniel F. O Donnell, Jr.*, 54 ECAB 456 (2003); *Phyllis Weinstein (Elliot H. Weinstein)*, 54 ECAB 360 (2003); *Robert V. Disalvatore*, 54 ECAB 351 (2003); *Bernadine P. Taylor*, 54 ECAB 336 (2003); *Karen L. Yeager*, 54 ECAB 317 (2003); *Barry Neutuch*, 54 ECAB 313 (2003); *David W. Pickett*, 54 ECAB 272 (2002).

injuries. Dr. Velagapudi opined that her employment-related conditions had resolved and that appellant could work eight hours a day with no restrictions.

The Office referred appellant to Dr. Milgram, selected as the impartial medical specialist. Dr. Milgram listed no objective findings of residuals relative to the accepted employment-related conditions of cervical strain and subluxation at C5-6. After reviewing appellant's medical records and reporting essentially normal findings on physical examination, he opined that appellant was not currently disabled and that her employment-related conditions had resolved. Dr. Milgram found that her complaints were subjective in nature and were not supported by objective evidence. He noted that his review of x-rays taken over 15 years did not demonstrate subluxation at C5-6. Dr. Milgram stated that the configuration of appellant's spine was not abnormal but just the shape of her spine which was not the result of an accident. He further stated that the disc at the involved level maintained its height and water content and there was no evidence of subluxation. Dr. Milgram related that appellant did not sustain a herniated disc and that her chiropractors overinterpreted her x-rays. He concluded that there was no evidence of significant neurologic disease process that prevented her from performing her regular work duties at the employing establishment.

The Board finds that Dr. Milgram's opinion constitutes the special weight of the medical evidence as it is based on a proper factual and medical background and is entitled to special weight. Dr. Milgram found that appellant no longer had any residuals or disability due to the accepted employment-related cervical strain and subluxation at C5-6.

LEGAL PRECEDENT -- ISSUE 2

As the Office met its burden of proof to terminate appellant's compensation benefits, the burden shifted to her to establish that she had any disability causally related to her accepted injury.[5] To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence, based on a complete factual and medical background, supporting such a causal relationship.[6] Causal relationship is a medical issue and the medical evidence required to establish a causal relationship is rationalized medical evidence.[7] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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.[8]

[5] *See Manuel Gill*, 52 ECAB 282 (2001).

[6] *Id.*

[7] *Elizabeth Stanislav*, 49 ECAB 540 (1998).

[8] *Leslie C. Moore*, 52 ECAB 132 (2000); *Victor J. Woodhams*, 41 ECAB 345 (1989).

ANALYSIS -- ISSUE 2

The relevant medical evidence regarding continuing employment-related residuals and disability after September 8, 2002 includes reports from Dr. Tutor who found that appellant continued to have residuals of her employment-related chronic subluxation/fixation at C5-6 and C6-7 based on Dr. Thielen's March 25, 2003 MRI scan, and chronic sprain and strain of the cervical region. Dr. Tutor noted appellant's unsuccessful attempts to return to work were due to increased pain and fatigue and inconsistency in her medical treatment. His reports did not fully explain why appellant's continuing cervical problems and disability were causally related to her accepted employment-related cervical strain and subluxation at C5-6.[9] Further, Dr. Tutor's opinion regarding causal relation and disability is similar to his prior opinion that was considered and found to give rise to the conflict in medical opinion. A subsequently submitted report of a physician on one side of a resolved conflict of medical opinion is generally insufficient to overcome the weight of the impartial medical specialist or to create a new conflict of medical opinion.[10] The Board finds that Dr. Tutor's reports are insufficient to establish appellant's claim of continuing employment-related residuals.

The reports from Drs. Shepherd, Ahlskog and Thompson found that appellant sustained myofascial pain syndrome, fibromyalgia and fibrous dysplasia of the right fourth rib lesion, paresthesias of the upper extremities, musculoskeletal neck and head pain, elevated alkaline phosphatase and fourth rib expansile lesion, depression and nonrestorative sleep. The Board notes that the only conditions accepted by the Office were cervical strain and subluxation at C5-6. Where an employee claims that a condition not accepted or approved by the Office is due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[11] None of the physicians explained, with medical rationale, how appellant's diagnosed conditions were causally related to the accepted January 25, 1988 employment-related conditions.[12] The Board finds that the reports of Drs. Shepherd, Ahlskog and Thompson are insufficient to establish appellant's claim.

Similarly, Dr. Echiverri's March 5 and June 24, 2004 treatment notes are insufficient to establish appellant's burden of proof. He opined that her chronic cervical strain and sprain with myofascial pain syndrome (fibromyalgia) were a continuation of her employment-related injuries. However, Dr. Echiverri failed to provide medical rationale explaining how or why appellant's current cervical and pain conditions were caused by the accepted employment-related

[9] *Richard A. Neidert*, 57 ECAB ___ (Docket No. 05-1330, issued March 10, 2006); *Alice J. Tysinger*, 51 ECAB 638 (2000) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[10] *See Kathryn E. Demarsh*, 56 ECAB ___ (Docket No. 05-269, issued August 18, 2005); *William Morris*, 52 ECAB 400 (2001). The Board notes that Dr. Tutor's reports do not contain new findings or rationale upon which a new conflict might be based.

[11] *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[12] *Richard A. Neidert*, *supra* note 9.

conditions.[13] The Board finds that his treatment notes are insufficient to establish appellant's burden of proof.

In reports dated November 22, 2004 and May 9, 2005, Dr. Echiverri stated that appellant sustained myalgia and cervical and lumbar sprain/strain. He opined that these conditions remained unchanged since her last examination. The Board finds that Dr. Echiverri's reports are insufficient to establish appellant's burden of proof because they failed to address how appellant's diagnosed conditions were caused or contributed to by her accepted employment-related conditions.[14]

Dr. Echiverri's August 16, 2005 report found that appellant sustained myofascial pain syndrome, fibromyalgia, thoracic outlet syndrome, tendinitis, depression and anxiety causally related to her accepted employment-related injuries. He stated that the employment-related cervical strain and sprain triggered the development of spasms in the paracervical muscles which caused the development of myofascial pain syndrome which was difficult to treat and prone to recurrent exacerbation and flare-up as these muscles were reinjured by even the simplest exertion. Dr. Echiverri further stated that this would lead to a chronic condition that recruited nearby muscles to spasms and started a vicious cycle until the involvement progressed from a regional involvement, *i.e.*, neck muscles, to a more generalized involvement until the whole body was practically in pain. He related that his objective findings of spastic muscles with discreet reproducible trigger points that were more prominent in the cervical area supported his myofascial pain syndrome diagnosis. Dr. Echiverri stated that appellant's employment-related injuries caused a state of increased muscle tone and spasms in the cervical paraspinal muscles which squeezed nerves and vessels that traversed certain muscle groups such as those located in the supraclavicular and lateral angle of the neck which lead to thoracic outlet syndrome. He indicated that her tendinitis resulted from muscles that held a joint together and were in continual spasms which caused the joint to be more impacted together and to sustain greater wear and tear. Dr. Echiverri concluded that appellant's chronic pain led to her reactive depression and anxiety over an unyielding and frustrating condition. The Board notes that the Office never accepted any conditions other than a cervical sprain and subluxation at C5-6. Dr. Echiverri failed to provide sufficient medical rationale explaining how appellant's diagnosed conditions were caused by the accepted January 25, 1988 employment-related conditions.[15] The Board finds that his report is insufficient to establish appellant's burden of proof.

The treatment notes of Ms. Bartel, a registered nurse, have no probative value because a registered nurse is not considered a physician under the Act.[16]

Appellant has not submitted sufficient rationalized medical evidence establishing that she has any continuing residuals or disability causally related to her accepted employment-related conditions.

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[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] 5 U.S.C. § 8101(2); *see Sheila A. Johnson*, 46 ECAB 323 (1994).

CONCLUSION

The Board finds that the Office properly terminated appellant's compensation effective September 8, 2002 on the grounds that she no longer had any residuals or disability causally related to her accepted employment-related cervical strain and subluxation at C5-6. The Board further finds that appellant failed to establish that she had any continuing employment-related residuals or disability after September 8, 2002.

ORDER

IT IS HEREBY ORDERED THAT the January 19, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 21, 2007
Washington, DC

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

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board