

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

M.B., Appellant

and

**DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
Holtsville, NY, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 07-1649
Issued: March 7, 2008**

Appearances:

*Thomas S. Harkins, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 29, 2007 appellant, through her attorney, filed a timely appeal of the March 19, 2007 merit decision of the Office of Workers' Compensation Programs.¹ Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction to review the merits of this case.

ISSUES

The issues are: (1) whether appellant has established that her claim should be accepted for additional medical conditions; (2) whether the Office properly terminated appellant's compensation benefits effective December 2, 2003 on the basis that she did not have any remaining disability causally related to her accepted employment injuries; and (3) whether appellant had disability on or after December 3, 2003 causally related to the accepted February 21, 2002 employment injury.

¹ In this decision, the Office reissued its January 7, 2005 decision denying modification of its December 2, 2003 decision terminating appellant's compensation benefits effective that date.

FACTUAL HISTORY

On February 21, 2002 appellant, then a 41-year-old tax examiner, sustained injury to her right wrist, knee, hip, ankle, back and neck when she tripped on a carpet. She stopped working the date of the injury. By letter dated May 23, 2002, the Office accepted appellant's claim for lumbar sprain; sprain of the neck, right hip and thigh; and contusions of the right knee, wrist and hand. Her claim was later accepted for a right meniscal tear.

A June 24, 2002 magnetic resonance imaging (MRI) scan of the cervical spine read by Dr. Melissa Sapan, a Board-certified radiologist, found mild disc bulging at C3-4 and C4-5. An MRI scan of the lumbosacral revealed findings suspicious for T11-12 right parasagittal disc herniation. Dr. Sapan also noted that L4-5 left far lateral disc herniation narrows the left neural foramen. An MRI scan of the right knee conducted that day was interpreted by Dr. Melvin Leeds, a Board-certified radiologist, as showing a subtle tear of the posterior horn of the medial meniscus reaching the inferior articular margin with no associated degenerative change or displacement of meniscal fragment. A small joint effusion was also noted. A September 3, 2002 MRI scan of the thoracic spine was interpreted by Dr. Philip Beucher as showing T9-10 right parasagittal small disc herniation and T11-12 right parasagittal disc bulge.

On September 17, 2002 appellant underwent arthroscopy and partial medial meniscectomy of the right knee.

Appellant was treated by Dr. Meeta Govindarajan, a Board-certified internist. In a medical report dated April 10, 2003, he noted treatment of appellant for the February 21, 2002 injury. Appellant continued to have right knee pain and experienced numbness in her hands. Dr. Govindarajan listed his clinical impressions as cervical spine disc disease, cervical sprain/strain, lumbar spine disc disease, lumbar spine sprain/strain, thoracic disc disease, mid-back strain and right knee derangement syndrome. He opined that appellant was temporarily totally disabled. Dr. Govindarajan stated: "It is my opinion with a reasonable degree of medical certainty [that] the injury mentioned is a competent provocative cause of the impairment and disability and is causally related."

On April 25, 2003 appellant was referred to Dr. Vartkes Khachadurian, a Board-certified orthopedic surgeon, for a second opinion. In a medical report dated May 16, 2003, he diagnosed right knee sprain with an MRI report of posterior horn tear medial meniscus, status post partial meniscectomy, chondroabrasion due to degenerative changes, cervical and lumbar sprains with no evidence of neuromotor deficit and no evidence clinically of herniated discs of either the cervical, lumbar or thoracic spine. Dr. Khachadurian stated that appellant had recovered from her injuries and was capable of returning to her usual work activities as a tax examiner with no restrictions, except for kneeling and squatting. He noted that there were no objective findings related to the examination of the lumbar spine or the neck or the right wrist. Appellant's current disability was related to the injury to her right knee, which was treated by a partial meniscectomy. She had a mild disability in the right knee which was permanent and which was also caused by an underlying degenerative condition of the knee. Dr. Khachadurian concluded: "It is my orthopedic opinion that the work-related injury is not active but that the results of the injury and the underlying degenerative condition of the knee joint are aggravated by kneeling, squatting and jumping and these restrictions should be allowed to prevent further recurrences."

The Office found a conflict in medical opinion between Dr. Govindarajan and Dr. Khachadurian. By letter dated September 22, 2003, it referred appellant to Dr. Edmund Stewart, a Board-certified orthopedic surgeon, for an impartial medical examination in order to resolve the conflict. In a medical report dated October 14, 2003, Dr. Stewart diagnosed cervical sprain (resolved), lumbosacral sprain (resolved), right wrist sprain (resolved), right ankle sprain (resolved), status post right knee sprain and status post arthroscopic surgery right knee. He stated that the diagnoses were causally related to the February 21, 2002 trip and fall. Dr. Stewart noted that appellant made a satisfactory recovery from her injuries and required no further orthopedic follow-up, therapy or studies. He stated that there was "little in the way of objective findings to support [appellant's] numerous subjective complaints...." Dr. Stewart noted that there were no objective orthopedic findings in appellant's neck or back to support any MRI scan changes. He opined that appellant was capable of performing full work in her duties as a tax examiner. Dr. Stewart did note that appellant had a mild impairment of her right knee joint and should not be asked to squat or kneel or climb ladders.

In reports dated May 16, June 13, July 10 and 23, 2003, Dr. Govindarajan reiterated that appellant was totally disabled due to her work-related injuries.

On October 29, 2003 the Office issued a proposed notice of termination of benefits. The Office found that the weight of the medical opinion evidence was represented by the opinion of Dr. Stewart. The Office proposed terminating wage-loss and medical benefits as the weight of the medical evidence of record demonstrated that appellant had no continuing injury-related disability as a result of his injury.

On November 18, 2003 appellant, through her attorney, objected to the proposed termination of benefits. In reports dated September 4 to November 7, 2003. Dr. Govindarajan to opined that appellant was totally disabled due to her work injuries.

By decision dated December 2, 2003, the Office terminated appellant's wage-loss compensation. The Office noted that appellant's medical benefits referable to the employment injury remain uninterrupted.

On September 23, 2004 appellant, through her attorney, requested reconsideration of the decision terminating her benefits. He contended that the Office should expand its acceptance of appellant's claim to include "all compensable injuries and conditions sustained by [appellant] as a result of the federal employment-related incident of February 21, 2002." Appellant's attorney further contested the Office's decision to terminate compensation benefits effective December 2, 2003, as Dr. Govindarajan established that appellant had residuals of her accepted conditions. It was further argued that the reports of Dr. Khachadurian and Dr. Stewart were based on an inaccurate history of symptoms and an incomplete and inaccurate factual background. On April 8, 2004 Dr. Govindarajan rated impairment to the whole person as follows: six percent due to cervical disc disease, three percent due to thoracic disc disease, seven percent due to lumbar disc disease, two percent due to right knee meniscectomy and five percent due to carpal tunnel syndrome in the upper extremity. In a June 8, 2004 addendum, Dr. Govindarajan noted that appellant was totally disabled from gainful employment. On August 19, 2004 he noted that he last saw her on December 12, 2003. On January 2, 2004 appellant underwent an MRI scan on her right knee, which was interpreted by

Dr. Jason L. Hodges as showing a small joint effusion and inferior surface tear of the posterior horn of the medial meniscus. Dr. Hodges also noted mild chondromalacia patella.

By decision dated January 7, 2005, the Office denied modification of the December 2, 2003 decision. Additionally, the Office denied expanding the acceptance of appellant's claim.

On March 29, 2005 appellant filed an appeal to the Board from the January 7, 2005 decision. As the Office did not forward the case record in a timely fashion, the Board remanded the case for reconstruction and proper assemblage of the case record. The Board noted that, in order to fully protect appellant's appeal rights, the Office should issue a new decision.²

On March 19, 2007 the Office reissued the January 7, 2005 decision.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of the Act; that the claim was filed within the applicable time limitation of the Act; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition, for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

Causal relationship is a medical issue and the medical issue generally required to establish causal relationship is rationalized medical opinion evidence.⁵ 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.⁶ The opinion of the physician must be based on a complete factual and medical background of the claimant⁷ explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁸

² Docket No. 05-1004 (issued September 6, 2006).

³ 5 U.S.C. §§ 8101-8193.

⁴ *Calvin E. King*, 51 ECAB 394 (2000); *Caroline Thomas*, 51 ECAB 451 (2000).

⁵ *John J. Montoya*, 54 ECAB 306 (2003).

⁶ *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

⁷ *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

⁸ *Judy C. Rogers*, 54 ECAB 693 (2003).

ANALYSIS -- ISSUE 1

The Office accepted appellant's claim for a work injury that occurred on February 21, 2002 resulting in a lumbar sprain; sprain of the neck, right hip and thigh; contusion of the right knee, wrist and hand; and right meniscal tear. On appeal, appellant's attorney contends that the Office should expand the class of accepted conditions to "include all conditions outlined in the medical evidence of file." The Board notes that it is unclear from the brief what specific conditions appellant's attorney contends should be accepted. In an April 8, 2004 report, Dr. Govindarajan listed his impressions as lumbar sprain/strain, cervical sprain/strain, right hip strain, right knee contusion and right wrist contusion -- conditions which were accepted as resulting from the February 21, 2002 injury. He did note that the MRI scans conducted on June 24, 2002 showed a mild disc bulge at C3-4 and C4-5, L4-5 disc desiccation and disc bulging a herniated nucleus pulposus at T1-2 and a subtle tear of the posterior horn of the medial meniscus. Appellant's claim was not accepted for herniated disc, disc bulge, herniated nucleus pulposus or small joint effusion. Dr. Govindarajan merely related that these conditions were found on the MRI scans. He did not provide an opinion relating these conditions to appellant's accepted work injury. The physicians interpreting the MRI scans did not relate these conditions to the accepted employment injury. A June 8, 2004 note merely indicated that, as of May 21, 2004, appellant was found disabled. The report August 19, 2004 basically repeats the information in the prior reports. Dr. Govindarjan opined that appellant had cervical spine disc disease, lumbar spine disc disease, thoracic disc disease and bilateral carpal tunnel syndrome, in addition to other accepted conditions. However, he did not provide a rationalized medical opinion addressing how these conditions were related to appellant's accepted injury. Dr. Govindarjan merely noted that the accepted work injury was a competent provocative cause of the impairment and disability and was causally related. He failed to provide adequate explanation in support of his stated conclusion. Medical conclusions unsupported by rationale are of diminished probative value.⁹ A January 2, 2004 MRI scan of appellant's right knee shows small joint effusion, inferior surface tear of the posterior horn of the medial meniscus and mild chondromalacia patella. Dr. Hodges did not offer an opinion as to the cause of these conditions or how they relate to appellant's accepted work injury.

Accordingly, the evidence of record does not support that the Office should have accepted appellant's claim for additional medical conditions. The fact that a condition is mentioned in a medical report along with other accepted conditions does not infer that it is related to the work injury. An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there was a causal relationship between her claimed condition and her employment.¹⁰ Accordingly, the Office properly limited the accepted conditions to lumbar sprain, sprain of the neck, right hip and thigh; contusion of the right knee, wrist and hand; and right meniscal tear.

⁹ *Jacquelyn L. Oliver*, 48 ECAB 232 (1996).

¹⁰ *Patricia J. Glenn*, 53 ECAB 159 (2001).

LEGAL PRECEDENT -- ISSUE 2

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.¹¹ Having determined that an employee has a disability causally related to his or her federal employment, the Office may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.¹²

It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.¹³

ANALYSIS -- ISSUE 2

In the instant case, a conflict arose between appellant's treating physician, Dr. Govindarajan, and the second opinion physician, Dr. Khachadurian, with regard to whether there was any continuing disability due to the accepted injury. Dr. Govindarajan opined that appellant was totally disabled as a result of her work-related injuries. Dr. Khachadurian opined that appellant had recovered from her work injuries and was capable of returning to her usual work as a tax examiner. In order to resolve the conflict between these physicians, the Office properly referred appellant to Dr. Stewart, selected as the medical referee, who found that appellant was capable of performing full work in her duties as a tax examiner, although he did note that she should not be asked to squat, kneel or climb ladders. Dr. Stewart noted that she made a satisfactory recovery from her injuries and required no further orthopedic follow-up therapy or diagnostic studies as there was "little in the way of objective findings" to support her subjective complaints. He pointed out that there was no objective evidence in appellant's neck or back to support MRI scan findings. Based on the well-rationalized opinion of Dr. Stewart, the Office properly terminated benefits effective December 2, 2003. In reports dated September 4 to November 7, 2003, Dr. Govindarajan again stated that appellant was totally disabled from her work injuries. It is well established that the subsequently submitted reports of a physician on one side of a conflict of medical opinion are generally insufficient to overcome the weight of the impartial medical specialist or to create a new conflict of medical opinion.¹⁴ The new reports of Dr. Govindarajan repeated the conclusions stated in his prior reports. The Board, therefore, finds these reports are insufficient to overcome the weight according to Dr. Stewart, the impartial medical examiner.

¹¹ *Curtis Hall*, 45 ECAB 316 (1994).

¹² *Jason C. Armstrong*, 40 ECAB 907 (1989).

¹³ *Gloria J. Godfrey*, 52 ECAB 486, 489 (2001).

¹⁴ *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

LEGAL PRECEDENT -- ISSUE 3

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating benefits shifts to appellant.¹⁵ In order to prevail, she must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability, which continued after termination of compensation benefits.

ANALYSIS -- ISSUE 3

In the instant case, appellant submitted reports by Dr. Govindarajan dated April 8 to August 19, 2004, in support of her contention that she had residuals of her work-related injuries. The April 8, 2004 report and June 8, 2004 addendum discuss an impairment rating, which is not relevant to the termination issue. Moreover, Dr. Govindarajan noted that he had not seen appellant since December 12, 2003. His conclusion in his August 19, 2004 report that appellant's work injury was the provocative cause of her disability did not provide any discussion of the findings from examination that he considered in making his determination.

Counsel contends that the opinions of Drs. Khachadurian and Stewart were not based on an accurate factual background. Dr. Stewart indicated that appellant had not taken her medications the date of his examination. Counsel noted that she did not take her medication because she had to drive that date. There is no indication that Dr. Stewart's statement was incorrect or how this observation gave rise to any factual inaccuracy. Appellant also contends that Dr. Stewart was inaccurate as to the amount of driving she performed prior to the examination and the car she drove. These matters are largely irrelevant to the findings of the physician on examination of appellant. Appellant contends that Dr. Khachadurian incorrectly diagnosed cervical and lumbar sprain with no evidence of herniated discs or either cervical or lumbar spine or thoracic spine when prior the MRI scans showed disc herniations. Dr. Khachadurian reviewed all the medical evidence, including the MRI scans. His opinion was not based on inaccurate information. As noted the Office did not accept any herniated discs as related to the accepted injury.

Appellant has not met his burden of proof to show that she had any continuing disability after termination of compensation.

CONCLUSION

The Board finds that appellant has not established that his claim should be accepted for additional conditions. The Office properly terminated appellant's compensation benefits effective December 2, 2003 and that she did not establish that she had any continuing disability after that date.

¹⁵ See *Joseph A. Brown, Jr.*, 55 ECAB 542 (2004); *Virginia Davis Banks*, 44 ECAB 389 (1993); *Joseph M. Campbell*, 34 ECAB 1389 (1983).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 19, 2007 is affirmed.

Issued: March 7, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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