

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CYNTHIA L. MOTON and DEPARTMENT OF THE TREASURY,  
INTERNAL REVENUE SERVICE, Philadelphia, PA

*Docket No. 02-1516; Submitted on the Record;  
Issued November 19, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's wage-loss benefits effective September 9, 2001 on the grounds that her work-related disability had ceased.

On September 22, 1989 appellant, then a 36-year-old remittance perfection clerk, injured her left arm and lower back when her work chair rolled back and slipped out from under her and she fell to the floor.<sup>1</sup> She stopped work on that date and did not return. The Office accepted the claim for multiple contusions of the face and scalp along with neck and back strain. Appellant did not return to work following the September 22, 1989 injury and was paid monthly compensation beginning March 14, 1990.

Dr. Max Karpin, an attending neurologist, treated appellant beginning January 23, 1991 for her employment-related conditions. Dr. Karpin noted that appellant lost consciousness during the September 22, 1989 fall and injured her back when she fell from her chair to the ground. In a report dated June 26, 1991, he noted that appellant's pain and discomfort in her cervical and lumbar areas were markedly improved, spasticity was still a problem and that she continued to have pain in the left lower extremity. In monthly reports beginning September 9, 1991 contained in the record, Dr. Karpin maintained that appellant still had pain and discomfort in the cervical, dorsal and lumbar spine related to the accepted employment injury.

Appellant was later referred for a second opinion examination with Dr. Gladys Fenichel, a Board-certified psychiatrist and neurologist and Dr. Noubar Didizian, a Board-certified orthopedic surgeon. Dr. Fenichel opined in his January 12, 1994 report that appellant did not have any psychiatric disorder and that there were no psychiatric contraindications to appellant

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<sup>1</sup> Appellant also sustained an injury on April 20, 1989 when the chair she was sitting in rolled out from under her causing her to fall to the floor. The claim was accepted for lumbosacral strain and contusion left elbow. Appellant was disabled from work from April 20 to June 5, 1989.

returning to her full job responsibilities with the employing establishment. Dr. Didizian opined in his January 12, 1994 report that appellant's subjective complaints were not substantiated by her orthopedic and neurological examinations.

In monthly reports continuing from May 26, 1995, Dr. Karpin noted that appellant had persistent pain and discomfort in the cervical, dorsal and lumbar area. He further discussed his findings that appellant was in a post-traumatic status with a closed head trauma, post-traumatic cephalgia, mixed type of cephalgia muscle contraction and vascular type, cervical and lumbar sprain and strain, bilateral scapular myofascial syndrome and left lumbar radiculopathy.

On May 3, 1995 appellant was referred for an impartial medical examination with Dr. Robert Aiken, a Board-certified neurologist, to resolve a conflict in the medical evidence between Drs. Karpin and Didizian regarding whether appellant had any work-related residuals of the September 22, 1989 injury. In a June 15, 1995 report, Dr. Aiken initially determined that appellant probably had mild post-traumatic musculoskeletal pain after the fall from her chair at work. He stated that his examination did not detail any significant persisting neurological or musculoskeletal abnormality that would explain the intractable diffuse nature of her unresolving problems. Dr. Aiken then concluded that appellant had no residuals of her work-related injury and that she could return to her prior work or any similar position for which she was qualified.

The record contains a diagnostic report dated April 30, 1996, which indicated that ultrasound imaging was conducted and revealed that appellant's cervical spine was abnormal with evidence of myositis, myofascitis and facet capsular inflammation throughout the cervical region. The report also indicated that the thoracic spine revealed paraspinal inflammatory signs at the upper thoracic facets and that lumbar sonograms were abnormal with evidence of bilateral paraspinal inflammation throughout the lumbar region with evidence of mild nerve root irritation bilaterally at the L3-5 regions. A magnetic resonance imaging (MRI) scan report of the lumbar spine performed November 2, 1996 revealed that there was a mild facet degeneration at L4-5 and L5-S1 and no disc herniation.

In monthly reports continuing from January 7, 1997, Dr. Karpin diagnosed appellant with chronic pain syndrome and maintained that her post-traumatic mixed cephalgia and pain in the cervical, dorsal and lumbar spine were still a problem.

On November 19, 1998 the district medical adviser for the Office referred the case to Dr. Aiken for reevaluation on January 4, 1999 regarding appellant's injury-related factors of disability. In his report dated March 15, 1999, Dr. Aiken restated his belief that appellant was not disabled. He indicated that examination in 1995 and again at that time disclosed no residual evidence of neurological dysfunction. Dr. Aiken noted that appellant had persistent headaches and opined, however, that they were so vaguely described that they were not a residual sequelae of her work-related fall. He also reviewed the diagnostic tests of record and found no changes. Dr. Aiken reported that there had been no interval change, which would change his opinion of appellant's ability to work full time in any job for which she was educationally or vocationally suited.

On November 22, 1999 the Office issued a notice of proposed termination of compensation benefits based on the 1995 and 1999 opinions of Dr. Aiken, the impartial medical

examiner that objective findings established no continuing disability as a result of the September 22, 1989 employment injury.

In a letter dated December 22, 1999, Jeffrey Zeelander, Esq., appellant's counsel argued that the Office improperly referred appellant to Dr. Aiken for a referee examination in 1999 since he had previously examined appellant in 1995 and further argued that his medical opinion was flawed.

In response, the Office referred appellant to Dr. Grant Liu, a Board-certified neurologist, in order to resolve the conflict between Drs. Karpin and Aiken. In a September 25, 2000 report Dr. Liu related appellant's history of the work-related injury, reviewed appellant's medical records, detailed the conflict in medical opinion between Dr. Karpin, appellant's attending physician, and Dr. Aiken and reviewed his examination of appellant. He stated that the only objective findings that he could detect were some decreased reflexes on the left which might have been due to her established diagnosis of lumbar radiculopathy and indicated that he could not with certainty relate the work injury with the diagnosed condition. Dr. Liu opined that appellant was not disabled, that appellant reported that she felt nothing from her work-related injuries on April 20 and September 22, 1989 and that appellant had no work limitations due to accepted employment conditions.

The Office thereafter forwarded Dr. Liu appellant's date-of-injury job description for remittance perfection clerk and inquired whether appellant was medically capable of performing her job. In a May 2, 2001 notation, Dr. Liu stated that appellant could perform the duties of the position.

In reports dated April 5 and May 11, 2001, Dr. Karpin noted that appellant continued to have difficulties with her neck, upper back and left knee with pain and discomfort in the cervical, dorsal and lumbar spine.

In a May 21, 2001 letter, the Office requested a response from Dr. Liu to a previous inquiry as to whether appellant had any medical need for future physical or chiropractic therapy. In a report dated June 4, 2001, Dr. Liu indicated that she had no objective need for such treatment.

On June 19, 2001 the Office issued a notice of proposed termination of compensation benefits on the grounds that Dr. Liu's reports dated September 25, 2000 and May 2 and June 4, 2001 established no continuing disability as a result of the September 22, 1989 employment injury.

By decision dated August 27, 2001, the Office terminated appellant's wage-loss benefits effective September 9, 2001 on the grounds that the weight of the medical evidence established that appellant had no continuing disability resulting from her September 22, 1989 employment injury.

The Board finds that the Office has met its burden of proof to terminate wage-loss benefits effective September 9, 2001.

Once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.<sup>2</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>3</sup>

In this case, the Office accepted appellant's claim for multiple contusions, back and neck strain and paid appropriate compensation. The Office initially proposed to terminate appellant's compensation on November 22, 1999, based on the opinion of Dr. Aiken, who indicated that appellant had no employment-related residuals. However, appellant's attorney successfully argued that the Office improperly relied on Dr. Aiken's opinion as an impartial examiner since he first examined appellant in 1995. The Office thereafter determined that a conflict existed in the medical evidence between appellant's attending physician, Dr. Karpin, who disagreed with Dr. Aiken concerning whether appellant had any continuing work-related residuals and referred appellant to Dr. Liu, a Board-certified neurologist, to resolve the conflict.

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>4</sup>

The Board finds that, under the circumstances of this case, the opinion of Dr. Liu 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 conditions have ceased.

Dr. Liu reviewed appellant's history, reported findings and diagnosed appellant with lumbar radiculopathy, which he indicated based on objective findings was not found to be work related. He opined that appellant was not disabled and had no work limitations due to accepted employment conditions. Upon review of the description of appellant's date-of-injury position, Dr. Liu indicated that appellant could perform the duties of the position.

The Board finds that there is no medical evidence, which supports that appellant had any disability after September 9, 2001 that was causally related to her accepted work-related injury. Dr. Liu 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 of his latest reports of May 2 and June 4, 2001, Dr. Liu opined that appellant had absolutely no work-related reason for disability. He further reviewed appellant's job description at the date of injury and clearly indicated that appellant could perform the duties of the date-of-injury position. His opinion is found to be probative and reliable. The Board therefore finds that Dr. Liu's opinion constitutes the weight of the medical evidence and is sufficient to justify the Office's termination of benefits.

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<sup>2</sup> *Harold S. McGough*, 36 ECAB 332 (1984).

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

<sup>4</sup> *Aubrey Belnavis*, 37 ECAB 206 (1985).

For these reasons, the Office met its burden of proof in terminating appellant's compensation benefits.

The decision of the Office of Workers' Compensation Programs dated August 27, 2001 is hereby affirmed.

Dated, Washington, DC  
November 19, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member