

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIXIE L. RICHARDS and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Des Moines, IA

*Docket No. 03-230; Submitted on the Record;
Issued April 18, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's wage-loss compensation benefits effective September 12, 2001 on the grounds that she was no longer disabled due to her May 1, 2000 employment injury; and (2) whether the Office properly denied appellant's request for neck surgery.

On May 1, 2000 appellant, then a 52-year-old flat sorter machine operator, filed a traumatic injury claim alleging on that date she hurt the left side of her face, shoulder, elbow and leg when she was hit by an over the road container machine.¹ She stopped work on the date of injury.

By letter dated June 8, 2000, the Office accepted appellant's claim for left shoulder strain, contusion of the right elbow, left hip contusion and a closed head injury.

By letter dated July 5, 2000, the Office advised Dr. Rodney E. Johnson, a Board-certified orthopedic surgeon and appellant's treating physician, that medical reports recently submitted addressed a herniated disc at C6-7. The Office requested that Dr. Johnson provide whether this condition was caused by the May 1, 2000 employment injury. The Office also requested that Dr. Johnson determine when appellant would return to work and provide any limitations if she was unable to return to full-duty work.

¹ Prior to the instant claim, appellant filed a traumatic injury claim on June 10, 1997 alleging that on June 9, 1997 she experienced pain on the left side of her hip down to her left leg due to heavy lifting and pulling. The Office accepted appellant's claim for low back sprain. On November 3, 1997 appellant filed an occupational disease claim alleging that in June 1997 she experienced pain in and limited use of her left arm, hand and shoulder due to using her left arm and hand to insert mail into the flat sorter machine conveyor since the beginning of her employment on November 5, 1984. The Office accepted appellant's claim for left side cervical radiculopathy, aggravation of degenerative disc disease of the cervical spine and left shoulder impingement. The Office authorized left shoulder arthroscopy, which was performed on March 17, 1998.

In a July 26, 2000 response letter, Dr. Johnson indicated that appellant's complaints of upper extremity pain were related to herniated discs at C6-7, which were present prior to her most recent injury, but noted that she had work-related complaints dating back to 1997. He stated that appellant was reinjured on May 1, 2000 while at work and following this injury her pain had worsened. Dr. Johnson noted that appellant complained of causalgic pain in the left arm and that her condition had not improved with conservative management. He stated that anterior cervical interbody fusion of C5-6, C6-7 had been tentatively scheduled. Dr. Johnson concluded that appellant was unable to return to work due to her pain.

By letter dated August 15, 2000, the Office authorized cervical surgery, which was scheduled for November 28, 2000. The record indicates that the surgery was postponed because appellant had bronchitis and was subsequently rescheduled for January 18, 2001.

The Office received surveillance videotape from the employing establishing revealing appellant engaged in physical activities. In a January 4, 2001 letter, the Office advised appellant that her cervical surgery was not authorized at that time in light of this evidence. The Office further advised appellant that she was being scheduled for a second opinion medical examination.

By letter dated January 23, 2001, the Office referred appellant along with medical records, a statement of accepted facts and a list of specific questions to Dr. Daniel McGuire, a Board-certified orthopedic surgeon, for a second opinion medical examination.

Dr. Johnson submitted a February 7, 2001 report finding that appellant suffered from pain in her neck and upper extremity, paraesthesia and low back pain.

Dr. McGuire submitted a February 26, 2001 report indicating that any type of cervical surgery would not radically change appellant's clinical symptoms. He stated that appellant was not totally disabled, but that she might qualify for social security disability.

The Office found a conflict in the medical opinion evidence between Dr. Johnson and Dr. McGuire as to whether the recommended cervical surgery was warranted and referred appellant to Dr. Douglas M. Cooper, an orthopedic surgeon, for an impartial medical examination.

In a June 24, 2001 report, Dr. Cooper provided a history of appellant's June 1997 and May 2000 employment injuries, her complaints of left-sided neck and shoulder pain, his findings on physical examination and a review of the videotape and medical records. He diagnosed status post left shoulder subacromial decompression for impingement syndrome. Dr. Cooper stated that appellant may have some mild impingement syndrome. Regarding appellant's neck, he stated that she had degenerative disease at multiple levels based on magnetic resonance imaging testing. Dr. Cooper further stated that this was usually a chronic degenerative process, but that appellant may have had some irritation at the C7 nerve root. He did not find appellant's examination to be consistent with a specific radiculopathy. Dr. Cooper concluded that a cervical fusion was not warranted, noting that based on the videotape appellant functioned quite well, and thus, this type of surgery was unnecessary. He noted that appellant did not wish to undergo the surgery.

By letter dated July 11, 2001, the Office requested that Dr. Cooper provide additional information indicating whether appellant currently had a cervical condition as a result of the May 1, 2000 employment injury and whether appellant was able to return to her date-of-injury position as a flat sorter machine operator.

In response, Dr. Cooper submitted a July 16, 2001 letter stating that appellant's cervical condition was a result of her May 1, 2000 employment injury.² He stated that this type of injury healed in several months, but people continued to experience pain for several years. Dr. Cooper opined that appellant was able to return to her date-of-injury position at that time.

The Office issued a notice of proposed termination of wage-loss compensation on August 7, 2001 based on Dr. Cooper's opinion that appellant could return to work and that the surgery was not warranted.

In response to the notice of proposed termination, appellant submitted a letter from her attorney contending that the opinions of Drs. Cooper and McGuire were insufficient to terminate her compensation benefits and deny her surgery request.

By decision dated September 12, 2001, the Office terminated appellant's wage-loss compensation effective that date on the grounds that her work-related injuries had resolved and denied appellant's request for cervical surgery.

Appellant, through her attorney, requested an oral hearing before an Office representative. Along with her request, appellant submitted medical evidence. The August 16, 2001 and February 10, 2002 reports of Dr. Jane Schrader, a Board-certified family practitioner, indicated that appellant was unable to perform physical work due to her neck, shoulder and back pain. A June 15, 2000 report of Dr. Mohammad Salman Iqbal, a Board-certified anesthesiologist, provided a history of appellant's May 1, 2000 employment injury and medical background, a review of medical records and his findings on physical examination. Dr. Iqbal stated that he did not have all the records at that time, but appellant had obvious radicular pain with a limited amount of sympathetic pain causing swelling and edema of the suprascapular and arm, and facet joint pain due to severe limitation of mobility. He noted his treatment of appellant's pain. In another report of the same date, Dr. Iqbal described an epidurogram and a cervical epidural steroid injection that were given to appellant. In a follow-up report dated July 5, 2000, Dr. Iqbal indicated that appellant was still experiencing neck and back pain.

By decision dated August 20, 2002, the hearing representative affirmed the Office's September 12, 2001 decision.

The Board finds that the Office properly terminated appellant's wage-loss compensation benefits effective September 12, 2001 on the grounds that she was no longer disabled due to her May 1, 2000 employment injury.

² The Board notes that the Office subsequently expanded the acceptance of appellant's claim to include aggravation of a herniated disc at C6-7.

Once the Office accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.³ 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.⁴

In situations where opposing medical opinions on an issue are of virtually equal evidentiary weight and rationale, the case shall be referred for an impartial medical examination to resolve the conflict in medical opinion.⁵ The opinion of the specialist properly chosen to resolve the conflict must be given special weight if it is sufficiently well rationalized and based on a proper factual background.⁶

The Office properly determined that a conflict of medical opinion existed over whether cervical surgery was warranted. Dr. Johnson, appellant's treating physician, stated that appellant required an anterior cervical interbody fusion of C5-6, C6-7 while Dr. McGuire, an Office physician, opined that cervical surgery was not warranted. Thus, the Office properly referred appellant to Dr. Cooper, for an impartial medical examination.

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Cooper. After reviewing appellant's complaints, her medical history including the May 1, 2000 work-related injury, her medical records and the employing establishment's surveillance videotape and conducting a physical examination, Dr. Cooper diagnosed status post left shoulder subacromial decompression for impingement syndrome. He opined that a cervical fusion was not warranted because, although appellant may have had some mild impingement syndrome, her examination was not consistent with a specific radiculopathy. Further, Dr. Cooper stated that the videotape demonstrated that appellant functioned quite well. In addition, he noted that appellant did not even wish to undergo the surgery. More importantly, in a supplemental letter dated July 16, 2001, Dr. Cooper opined that appellant's cervical condition was a result of her May 1, 2000 employment injury, but that she was able to return to her date-of-injury position at that time.

The Office correctly found that the weight of the medical evidence rested with the independent medical opinion of Dr. Cooper that appellant was no longer disabled due to her May 1, 2000 employment injury as it was sufficiently probative, rationalized and based upon a proper factual background. Therefore, the Office acted correctly in according the opinion of Dr. Cooper the special weight of an impartial medical examiner.⁷ Based on this evidence, the Office properly terminated wage-loss benefits.

³ *Betty Regan*, 49 ECAB 496, 501 (1998).

⁴ *Raymond C. Beyer*, 50 ECAB 164, 168 (1998).

⁵ *Richard L. Rhodes*, 50 ECAB 259, 263 (1999).

⁶ *Sherry A. Hunt*, 49 ECAB 467, 471 (1998).

⁷ *Gary R. Seiber*, 46 ECAB 215 (1994).

Subsequent to the Office's August 20, 2002 termination decision, the burden of proof in this case shifted to appellant, who thereafter submitted both nonmedical and medical evidence in support of her request for an oral hearing. The Board notes that the issue is whether appellant has any ongoing residuals of her May 1, 2000 employment injury that caused her to be disabled for work. Accordingly, appellant's arguments that Dr. Cooper's opinion is of no probative value as it fails to offer any new medical evidence or opinion on how appellant's current conditions are causally related to her accepted work injuries are not persuasive.

Of the medical evidence submitted, the Board finds that it is not sufficient to outweigh or create a new conflict with Dr. Cooper, the impartial medical specialist in this case. Although the August 16, 2001 and February 10, 2002 reports of Dr. Schrader provided that appellant was unable to perform physical work due to her neck, shoulder and back pain, she failed to provide any medical rationale to support her opinion. Dr. Iqbal's June 15 and July 5, 2000 reports finding that appellant continued to suffer from pain and limited mobility failed to address whether they were caused by her accepted employment injury.

Accordingly, the reports of Drs. Schrader and Iqbal fail to provide any substantial new evidence to establish that Dr. Cooper's report was based on erroneous information and are insufficient to create a new conflict with or to outweigh Dr. Cooper's well-rationalized opinion that appellant's work-related conditions had ceased.

The Board further finds that the Office properly denied appellant's request for neck surgery.

Section 8103(a) of the Federal Employees' Compensation Act provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances and supplies prescribed or recommended by a qualified physician, which the Office considers likely to cure, give relief, reduce the degree of the period of disability, or aid in lessening the amount of the monthly compensation.⁸ The Office has the general objective of ensuring that an employee recovers from his injury to the fullest extent possible in the shortest amount of time. The Office, therefore, has broad administrative discretion in choosing means to achieve this goal. The only limitation on the Office's authority is that of reasonableness. Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.⁹ In order to be entitled to reimbursement for medical expenses, a claimant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury.

Proof of causal relationship in a case such as this must include supporting rationalized medical evidence.¹⁰ Thus, in order for surgery to be authorized, appellant must submit evidence

⁸ 5 U.S.C. § 8103(a).

⁹ *France H. Smith*, 46 ECAB 392 (1995); *Daniel J. Perea*, 42 ECAB 214 (1990).

¹⁰ *See Debra S. King*, 44 ECAB 203 (1992); *Bertha L. Arnold*, 38 ECAB 282 (1986).

to show that such surgery is for a condition causally related to the employment injury and that the surgery was medically warranted. Both of these criteria must be met in order for the Office to authorize payment.

As noted above, the Office properly found a conflict in the medical opinion evidence between Dr. Johnson, appellant's treating physician and Dr. McGuire, the Office physician, regarding the issue whether cervical surgery was warranted. In denying appellant's request for cervical surgery, the Office relied on the impartial medical opinion of Dr. Cooper. As found above, Dr. Cooper reviewed appellant's medical history and case record, and provided his findings on physical examination and medical rationale for his conclusion that the cervical surgery was not warranted. Thus, Dr. Cooper provided an opinion that was sufficiently well rationalized to support his conclusion and deserves the special weight of a specialist. The Board finds that Dr. Cooper's opinion represents the weight of the medical opinion evidence and establishes that the Office properly denied authorization for surgery.¹¹

The August 20, 2002 and September 12, 2001 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
April 18, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

¹¹ *David Alan Patrick*, 46 ECAB 1020, 1023 (1995) (impartial medical examiner's opinion was based on a complete review of the medical record and a thorough examination and was sufficiently rationalized to establish that appellant had no work-related residuals of his diagnosed cervical condition; thus his opinion was entitled to special weight).